CONSTITUTION-MAKING IN THE REGION OF FORMER SOVIET DOMINANCE

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With full texts of all new constitutions ratified through July 1995

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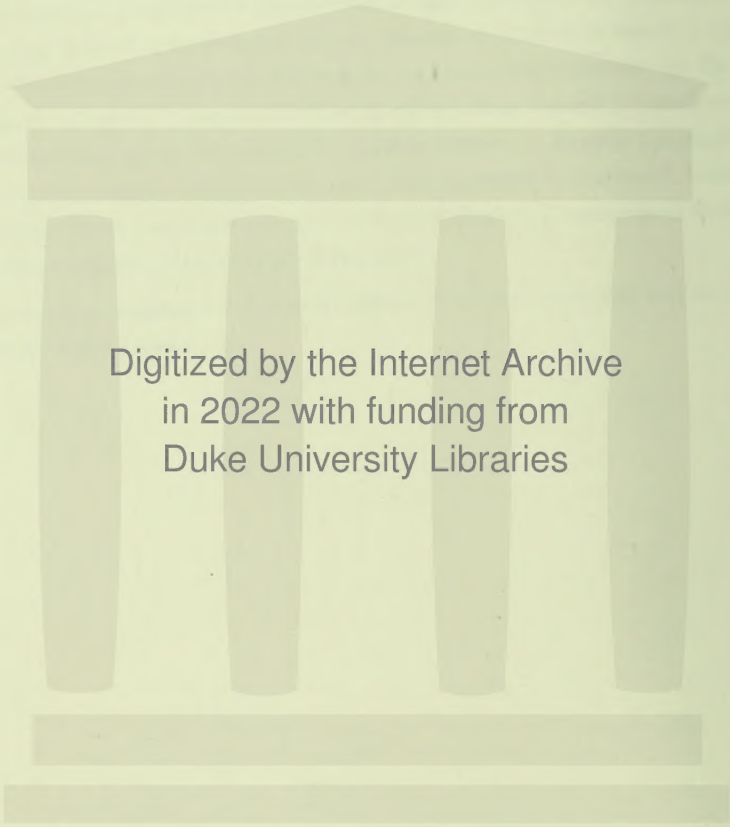
"QUAE PÓTUI, FECI, FÁCIANT MELIORA POTENTES"

To Anna, who will write a second part of this book



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INTRODUCTION

The consciousness that every mature nation-state, well-organized according to the rule of law, should clearly determine through one or a series of basic acts the principles of the state's political, social, and economic organization, the powers and duties of stage organs, and certain rights of the people, all contributed to the rapid emission of new constitutions. However, the expansion of constitutionalism raises the question of whether enduring political structures can be adopted without their being rooted in long-lasting, tested experience. Some experts claimed that good constitutions grow like trees, and, therefore, the successful process of constitution-making cannot be rapid at all.[1]

Experiences of the past fifty years seemed to confirm these reservations. Since World War II a large number of countries either adopted new constitutions or revamped their existing constitutional systems. Constitution-making intensified with the emergence of the socialist countries and the new states of the Third World. Since 1945 more than half the member states of the United Nations have undertaken some kind of fundamental constitutional reform.[2] Yet postwar constitutional experiences were for the most part dissatisfying. Without extraparliamentary means of control the constitutions of the socialist countries operated more like political-philosophical declarations than as legally binding norms. Most constitutions of the new Third World countries were copied from previous, well-tested structures without regard to their applicability to the emerging new states' unique geopolitical circumstances. The successes of these new constitutional systems were short-lived, and the political structures of the countries that came into being because of colonialism's collapse during the 1950s and 1960s were frequently and substantially transformed, which, contrary to popular expectations, usually resulted in the establishment of military forms of government.[3] These experiences seemed to confirm the thesis that a constitution's durability depends on the depth of the roots of a country's constitutional traditions.

One may argue differently, though, that time was critically important when

only a few countries had constitutions and when channels of information were poor. The longevity of constitutional traditions has become less significant with the growth of worldwide constitutional experience. The current dissemination of that constitutional experience seems to make possible quick adoption of well-tested constitutional principles. Experts studying the process of political transformation have observed the development of a new expertise—constitutional engineering. The point has been raised that successful transfer of power or the emergence of new centers of political responsibility requires a vast knowledge of the social, economic, cultural, and geopolitical circumstances in which the new institutions are to be installed. Successful constitutional drafting also requires an advanced comparative technique to help locate political devices that apply to unique combinations of local conditions. The success of constitutional works can be largely attributed to the mature intellectual background of the constitutional engineers and to their ability to draw from other nations' experiences. Arguably, the process of adopting mature basic laws may be accelerated, but it requires channels of information that facilitate the exchange of political ideas.

In the last decade the demand for new constitutions has become even more pronounced, and the problem of the development of constitutional engineering has become more timely. With the process of constitution-making already concluded in several East-Central European countries, and with fifteen former Soviet republics following similar paths, the region has become a major laboratory of constitutional works. Belarus, Bulgaria, the Czech Republic, Estonia, Kazakhstan, Kyrghyzstan, Lithuania, Romania, Russia, and Slovakia adopted entirely new constitutions.[4] Amendments introduced to the Hungarian constitution purged this act almost entirely of the remnants of its Stalinist legacy. Poles and Albanians produced interim constitutions, and Armenia and Ukraine significantly advanced their constitution-making works.

If several countries of the same region try to conclude constitution-drafting, the comparative dimension of this process must be spelled out. Constitutions do not develop in a political vacuum, and countries do borrow from each other; during periods when new political entities are emerging, they borrow heavily. This natural tendency to borrow raises several questions: How to accommodate tested constitutional models in countries with different political traditions? To what extent can the constitutional experiences of certain countries be reproduced in different geopolitical circumstances?

Conflict always accompanies change, and as the process of constitution-drafting unfolded many challenges arose. As the new democracies began writing constitutions, Western experts jumped into the fray and headed East. Many think tanks, law firms, law schools, and independent scholars of-

fered services and advice. They confronted East-Central European constitutional drafters unaccustomed to thinking about ideas such as the division of powers, judicial review, or the *état de droit* in terms of fundamental constitutional principles. To the surprise of Western experts, the venerated constitutional models they advocated were neither enthusiastically welcomed in East-Central Europe nor automatically recognized as superior to socialist constitutional institutions. A postsocialist lawyer tended to believe that superiority or inferiority was beside the point, and instead he wished to focus on the applicability of Western models to the unique situation of postcommunist Europe. Failure to take this attitude into account had to result in misunderstanding and problems of communication.

Some initiatives, such as the American Bar Association's Central and East European Law Initiative (CEELI) workshops,[5] were carefully prepared in cooperation with constitutional drafting commissions from numerous East-Central European countries. These proved effective. Other ventures advocating blind application of Western models frequently provoked critical comments from many European constitutional experts. It has become clear that the readiness of new democracies to borrow from the Western experience has its limits; these countries wish to declare their social orientation and emphasize the need for the state's protection over weaker social groups. To a postsocialist lawyer, both the common and civil law systems were subject to criticism because they protected establishments insensitive to social and economic unfairness.

The failure to recognize that the new democracies had their own legal experiences before they became socialist states also contributed to the clashes between Western and Eastern legal traditions. The constitutional histories of several Eastern European countries date only from the turn of the century, while other countries of this region have an impressive constitutional legacy to follow.[6] Constitutional experts must consider to what extent the longevity of the constitutional experience before socialism would effect the maturity of the new constitutional drafts.

Some controversies also arose from the dispute over whether the main purpose of the new constitutions was to abolish the socialist legal system or whether it was to immediately substitute a new legal order. Because constitution-making has profound consequences, the drafters had to address the question of whether the new constitutions were expected to last for decades or only as transitional interim devices.

Several things guided this project's development. I was fortunate to be involved in several constitutional workshops, and I had an opportunity to review and assess numerous draft constitutions prepared by both the for-

mer Soviet republics and by East-European new democracies. These works proved that during the stage of constitutional development in East-Central Europe, both remarkable similarities and differences could be discovered in the constitutional works of some of the region's countries. Are these similarities strong enough to justify a thesis on a new constitutional model emerging in the area of former Soviet dominance? The examination of this question is the primary aim of this work.

The book that gradually developed was preceded by three studies, "Searching for a New Constitutional Model for East-Central Europe" (1991) by the *Syracuse Journal of International Law and Commerce,* "Constitution Making in the Countries of Former Soviet Dominance: Current Development" (1993) by the *Georgia Journal of International and Comparative Law,* and "Fundamental Constitutional Rights in the New Constitutions of Eastern and Central Europe" (1995), published by the *Cardozo Journal of International and Comparative Law* (1995). These articles were incorporated, their parts analyzing current developments in East-Central Europe carefully updated, and several chapters, such as those on the distribution of powers or constitutional rights, freedoms, and duties, either rewritten or thoroughly edited.[7]

The book consists of two parts. The first (chapters 1 and 2) is historical, and focuses on Eastern European constitutional traditions. The second part updates constitutional transformation in the region. The organization of both parts requires some explanation. My purpose is not to add another essay to the myriad elaborate theoretical explanations of the fall of communism. Instead, I straightforwardly report on political transformation of the postsocialist era, emphasizing constitutional works. Part 2 is divided into four sections: chapter 3 is about the changes of the glasnost period and constitution-making in former Soviet republics; chapter 4 discusses the constitutional transformation of Soviet satellite countries of East-Central Europe; chapter 5 is on the reflections on a new constitutional model; chapter 6 discusses the placing of bills of rights in the new constitutions.

Chapters 3 and 4, which provide a country-by-country report, deal separately with states that emerged from the disintegration of the Soviet Union and with the former people's republics of Central and Eastern Europe. As the former Soviet republics existed within a single state until the end of 1991, it seemed appropriate to assemble comments on political developments in the former USSR in one chapter that examines the end of Mikhail Gorbachev's era and the process of establishing the Commonwealth of Independent States. The country-by-country discussion was limited to probing the process of constitutional drafting in several former Soviet republics that either already have adopted new constitutions or at the time of this writing, were close to

completing the process. My comments on constitutional drafts were organized around several important issues: the distribution of powers, the inclination to adopt features of presidential or parliamentary systems, constitutional enforcement, and the flexibility of constitutional provisions.

The subchapter on constitution-drafting in former socialist states of East-Central Europe is organized with slight differences. It focuses exclusively on individual countries of postsocialist Europe, with the exception of Yugoslavia where the unstable political situation allows for no serious evaluation of a future constitutional system. With all similarities linked to common socialist legacies, the former European peoples' democracies each had its own statehood, and, more recently, each faced different cultural, religious, economic, and ethnic problems. It seemed, therefore, more appropriate to examine their postcommunist traumas separately. Thus, each country section splits into a short report on political developments and a commentary on constitution-drafting.

An explanation in some detail of the references made in chapters 1–3 to French, German, or other constitutional models is presented in chapter 5. More theoretical than previous chapters, this section reviews the major constitutional controversies of the postcommunist world against the background of deeply rooted Western constitutional ideas. The chapter's principal aim is to analyze the fabric of the new constitutions, looking at describing the state in economic, political, and cultural terms; selecting the form of government; the concepts of the division of powers; of unicameralism and bicameralism; of a constitution being rigid or flexible; and a review of the constitutionality of laws. Based on information collected from the country reports, this chapter also observes the process of forming a new constitutional model in the region of former communist dominance.

The decision to single out a discussion of human rights protection in a separate chapter 6 has its own rationale. Writing this book, I realized that timeliness overrode a possibility of maturely evaluating the process of implementing the new constitutions. The new basic laws have been adopted, and examination of constitutional texts is highly instructive. Still, as of 1996, without offering some groundless predictions, I cannot tell much about how these constitutions will operate. The tasks of commenting on the actual balance of power, on the evolution of political systems provided for in the new basic laws, and on analyzing the body of judicial decisions produced by the new constitutional courts, all have to be undertaken later.

In the area of human rights protection, however, the data seemed to be more readily available. Violations of human rights have been notorious in all communist countries, and they have remained a major concern for the new

democracies. Since the emergence of the first postcommunist democracies, the new governments tried to improve their records in protecting civil rights and liberties. The new leaders claimed that the new constitutions were expected to provide legal guarantees for rights that authorities already respected; at the same time, the new constitutions would create an appropriate background for monitoring agencies to evaluate the effectiveness of governmental policies. The human rights situation was briefly analyzed in each country report and a separate chapter on the placement of bills of rights in the new constitutions was incorporated into the study's second part.

Finally, an annex with texts of the new constitutions follows the main study.

The research for this book was completed at the end of 1994 and the further updating process permitted incorporating into the text comments on the constitutions adopted through the first half of 1995 and most significant political changes through the beginning of 1996; English translations of later adopted constitutions of Georgia (24th August 1995) and Azerbaijan (12th November 1995) were not available at the time of writing and these constitutions were not analyzed and the texts were not added to the Annex. The verifiable data on the human rights situation in the region, available at the time of this writing, allowed an evaluation of the actual record in human rights protection during the first phase of the postcommunist transformation; it means until the beginning of 1995.

I am grateful to the Bradley Foundation, the Earhart Foundation, and the Marguerite Eyer Wilbur Foundation, all of which cosponsored this study. I also express thanks to Denise Casula, my research assistant, who was of great help collecting the materials, writing reports and briefs on the progress of constitutional works, and editing the manuscript into smooth and readable English. Her contribution to the final work has been extraordinary and deserves special recognition.

I

CONSTITUTIONAL HISTORY

1

CONSTITUTIONAL TRADITIONS

The Overview

Polish Constitutional Traditions

THE CONSTITUTION OF MAY 3, 1791

The constitutional history of a country begins when some institutions have been established and when procedures have been implemented to limit the government's power. "Constitutions," wrote Kenneth C. Wheare, "spring from belief in limited government."[1] The process of limiting the king's power began in Poland as early as the fourteenth century; later, Poland became a constitutional monarchy when other major European countries were reinforcing their absolutism.[2] At the end of the sixteenth century Poland with its system of "democracy of the gentry" looked like an island surrounded by monarchies that vested legislative, executive, and judicial power in one ruler. This system contributed to the internal crisis of the Polish commonwealth, which coincided with successful internal reforms in Russia, Prussia, and Austria. Its neighbors were interested in keeping Poland demilitarized, neutralized, and in a state of anarchy. In the eighteenth century a faction of politically mature nobles was formed; this faction was aware of the deficiencies within the Polish political system, and, despite internal opposition, it prepared sound programs of reform. By the end of the eighteenth century the nobles' activity resulted in the adoption of the first written constitution in Europe, one that substantially reformed the Polish political structure.[3]

The Polish constitution of 1791 began with "In the name of God, the one and only in the Holy Trinity." It drew the distinction between Roman Catholicism and "other creeds," and it stated that deviation from Catholicism was recognized as apostasy. It confirmed, however, that "the religious freedom, and protection of the government for other [than Roman Catholic] religions is guaranteed."[4]

Critics often tried to expose the nondemocratic character of the Polish constitution of 1791 and claimed that it was adopted by the nobility, served the interests of this single class, and did not solve crucial social problems.[5] In fact, the constitution did not undermine the monopoly of the nobility's political power, but it introduced the burghers into the political arena and gave peasants better protection of law. The bicentennial comparative studies of the American and Polish first constitutions demonstrate that the traditional attempt to set the democratic American constitution against the nondemocratic Polish act is not justified, and comparison of the addressees of political rights in both constitutions shows much more impressive similarities than are usually admitted.[6]

The critics of the first Polish constitution frequently argued that, despite the declaration that the highest authority was vested in the three powers of government, the whole concept of the distribution, separation, and balances of major governmental branches was not accomplished in the Polish constitutional reform. The Law on Government, as the May 3 constitution was officially called, and a few detailed statues departed from the original concept of checks and balances and granted far superior power in the Seym.

Composed of two chambers, the senate and the chamber of deputies, the Seym held legislative power. Although the king presided over the senate, national sovereignty was vested in the chamber of deputies, which was declared "to be a temple of legislature."[7] All bills were introduced to the lower chamber and then sent to the senate for further debate. The king did not have the right to veto the decisions of the lower chamber, a right that was vested in the senate, and the senate's veto could be overruled by the chamber of deputies in the subsequent session's second ballot. The legislative initiative was vested in the king along with the council of guardians, the deputies, and the local diets. The local diets retained the legislative initiative, but they could no longer vote on local taxes, and their instructions were not binding on deputies to the Seym, who were recognized as representatives of the whole nation. In this way, all legislative power was centralized in the Seym. The constitutionality of its decisions was not subject to any control. The Polish historian of law, Bogusław Leśnodorski, wrote: "we do not have here [in the concept of the reformed government] the idea of the strict division of powers. There is no balance. There are good foundations for the symocracy of the nobility."[8]

The constitution introduced a system that featured some attributes of parliamentary government. The legislature was recognized as a supreme power. The king, as head of the state, appointed the ministers for two years, but the

nominations were to be presented to both chambers of the Seym, which could vote no-confidence in the king's nominees. Also, a two-thirds majority of the joint chambers could dismiss a minister during his two-year tenure. However, the constitution did not provide for any procedure that could dismiss the entire government. The king, as a chief executive officer, was no longer elected. After the death of Stanislas Augustus, the Polish throne was to become hereditary in the House of the Elector of Saxony.[9] The king was not responsible for the parliament, but his decisions (as in the British government) could be exercised through, and on, the advice of ministers who were expected to countersign them.

The constitution provided that executive power be vested in the king and the guardians of law. The guardians did not constitute a formal cabinet; they were to perform the role of the king's council in which the "king's voice was to prevail." Similar to the president in the American system, the king assumed two roles: head of state and head of government.

The Law on Government of May 3, 1791, played a special role in Polish constitutional history. Under Russian pressure, the constitution was abolished by the rebel confederation in 1792 and was followed by the second partition of Poland of January 23, 1793. As advanced by the framers of the constitution, however, the basic principles of the government remained very much alive in Polish political thought. The Polish governmental law was not only the first European written constitution, but for generations of Poles it became a symbol of a mature political culture, and it left an important legacy that was followed by the twentieth-century Polish constitution.

POLISH CONSTITUTIONS IN THE PERIOD OF THE PARTITIONS

The Polish constitutions of the nineteenth century were granted by the foreign monarchies and displayed few similarities to the constitution of 1791. Those constitutions also exerted less influence on the development of current Polish constitutional thought. They require no extensive analysis here.

In 1794, Poland once again tried to end Russian tutelage. A national insurrection led by Tadeusz Kościuszko, the hero of the American Revolution, was unsuccessful. That insurrection was followed by King Stanislas Augustus Poniatowski's abdication (November 24, 1795) and the third partition of Poland, which eliminated the Polish state. Most Polish territories were incorporated into Austria, Prussia, or Russia.

The next constitution was granted to the Poles by Napoleon. In July 1807 Napoleon established a small, independent buffer state carved from the Prus-

sian segment of Poland. Napoleon summoned representatives of the Polish governing committee to Dresden and dictated a compact constitution[10] that consisted of eighty-nine short articles and lacked the patriotic phraseology of the constitution of 1791. It confirmed the status of Catholicism as "a State religion," but it emphasized that "all religious worship is free and public."[11] The proclamation of the constitution of 1791, which stated that "the deviation from Catholicism was recognized as apostasy," was deliberately omitted. The constitution of 1807 vested strong executive power in the king of Saxonia, who was to be the hereditary ruler of the duchy of Warsaw. The legislative power of the Seym was limited to taxation, civil law, and criminal law. The council of guardians from the constitution of 1791 was replaced by the French model of the council of state. The council, composed of ministers, was given vast powers to work on bills to be submitted to the Seym. It operated as an administrative court and a court of cassation. The constitution of 1807 "abolished slavery" and stated that "all citizens are equal in law." Generally, the constitution was fashioned on the French pattern and incorporated only a few Polish institutions. The constitution of the duchy of Warsaw served as a model for the constitution of Westphalia and for a few constitutions of the member states of the Union of the Rhineland.[12]

The fall of Napoleon ended the short life of the duchy of Warsaw. Early in 1813 the Russian army again entered Polish territory. After the Congress of Vienna (1815), the western part of the duchy of Warsaw (the grand duchy of Poznań) was incorporated into Prussia. A tiny autonomous state, the republic of Cracow, was formed from the district of Cracow. From the remainder of the former duchy of Warsaw, Russia created the kingdom of Poland. In November 1815 the new state was granted a constitution. The text was drafted by the Polish aristocrat, Adam Czartoryski, and was edited considerably by Tsar Alexander I.[13] The king, acting simultaneously as the Russian tsar, reserved for himself the legislative initiative and the right to veto the Seym's statutes. Both chambers were allowed to discuss the government's reports and legislative projects. The chamber of deputies could question the ministers and submit complaints about governmental officials to the senate. The meetings of the Seym were to be open to the press, an arrangement intended to guarantee public control over the lawfulness of governmental actions.

The constitution was quickly recognized as the most liberal in Europe. In numerous pamphlets Polish commentators glorified the "magnanimous tsar" and emphasized his "unlimited generosity" and truly liberal convictions.[14] Common optimism as to the glorious future of the kingdom under the tsar's liberal government reached its height shortly before the first session of the Seym in 1818.

The Poles expected that the two-chamber organization of the legislature would enable them to participate in the political process. The first session, however, showed that the deliberate use of ambiguous constitutional language by Alexander I could provoke many clashes between deputies and government. The practice quickly proved that the apparently liberal constitution was a mere declaration whose provisions were manipulated, avoided, and violated at whim by the tsarist administration. The constitution lasted until the next Polish upheaval, called the November Insurrection of 1830. Following the defeat of that insurrection, Tsar Nicholas I declared the constitution null and void, and he abolished both the Seym and the Polish army. In 1832 he granted the Polish kingdom, linked to Russia by the personal union,[15] an Organic Statute, which was to give the kingdom separate administrative and civil rights. "The Statute, however," wrote S. Kieniewicz, "was never enforced and the country was kept in a state of emergency."[16]

Until World War I the Polish territories remained part of the partitioning empires of Austria, Prussia, and Russia. Poles living in Galicia, the Austrian part of the Polish territories, were reintroduced into constitutional practices in the early 1860s when Emperor Franz Joseph granted two constitutional acts, the Diploma of 1860 and the Patent of 1861, which were to regulate the organization of the empire's governmental departments. After the Austro-Prussian War, the Reichstrat, the parliament in Vienna, in 1867 enacted the constitution under which the Austrian part of the monarchy was governed until 1918. The empire was divided into "the historic kingdom of Hungary" and the "historic kingdoms and lands" of Austria (including Galicia).[17]

In the loose confederation of German states after the early experience with the Napoleonic constitutions, the era of constitutional experiments began with the revolutionary events of the Spring of Nations. The Nationalist movement of January 1848 sparked a local revolution in Sicily that overturned the monarchy in France in February 1848 and extended rapidly throughout Europe, reaching the German states in March. The governments in the German states promised to adopt a constitution, and the national assembly was convened at St. Paul's Church in Frankfurt to draft a German constitution.[18] European constitutional models were carefully examined, but the framers drew most heavily from the American constitutional experience. Besides the federal structure patterned on the American model:

> references to and comparisons with the U.S. Constitution within the commission and the National Assembly covered many important subjects to be dealt with by the draft constitution—for example, the separation of church and state, and freedom of religion; a republican form of government; election system; citizenship; immunity and indem-

nity of members of parliament; the presidential system; amendment of the constitution; freedom of trade and occupation; free movement within the Union; freedom of the press, and jury trial; and states of emergency.[19]

The counterrevolution's victory in Germany hampered the constitutional movement until the adoption of Bismarck's constitutions of 1867 and 1871. The first, in 1867, followed the Austro-Prussian War and the formation of the North German Federation in October 1866; the second, the 1871 constitution of the German empire, resulted from the victorious war with France. Under the constitution of 1871 the emperor controlled foreign policy and the military forces, but Germany remained a federal union. Aristocratic-monarchical order was preserved in the individual states whose rulers were represented in the Bundesrat (federal council). The Reichstag (imperial parliament) exercised legislative power.[20] Prussia, which led the other German states into the federal union, adopted for itself a short-lived constitution in 1848. The constitution of 1850 was seriously inadequate by democratic standards,[21] and the influence of the German constitution of 1871 and the Prussian constitutions on political life in the Polish province was insignificant.

CONSTITUTIONS OF THE RESTORED POLISH STATE AFTER WORLD WAR I (1918–1939)

World War I brought Poland independence. The new state wished to continue the Polish constitutional traditions, and in January 1919 the "Ankieta" group was called to draft a project of the basic laws. "Ankieta" held seventeen meetings between February 17 and March 12, 1919, and prepared a project that vested broad executive power in the office of the president. The process for electing the president was based on the American model.[22]

However, the new constitution of March 17, 1921, disappointed those who believed that the new republic needed a strong presidential system rather than an impotent seymocracy.[23] In fact, the constitution of 1921 referred directly to "the glorious and memorable traditions of the Constitution of May 3."[24] Despite 130 years that divided the constitutions, their major principles showed many similarities. The preambles of both the 1921 act and the constitution of May 3, 1791, began with the phrase, "In the name of the Almighty God." The position of the Roman Catholic faith, being the religion of the great majority of Poles, was referred to in the 1921 constitutional text as "predominant among equal worships."[25] Article 2 of the 1921 constitution, resembling article 5 of the constitution of 1791, proclaimed that "the supreme power belongs to the nation" and explained that this power was to be divided among legisla-

ture, executive, and judiciary. Although the new state adopted a republican form of government, this form was denoted as a "commonwealth" in reference to the traditional name of the Polish state in the period of elective monarchy. Similar to the constitution of 1791, the separation of powers in the new constitution did not amount to their equality. The Seym had been given a far more predominant role among the powers. Although the constitution of 1921 referred to the traditions of Polish constitutionalism, its drafters also borrowed heavily from contemporary political systems, particularly from the French constitution of 1875.[26]

As a result of the coup d'etat of 1926, the constitution was amended, with the act of August 2, 1926, enhancing the president's power. On April 23, 1935, the constitution was changed. The new act, known as the April constitution, declared that total and undivided power was to be vested in the president of the republic.[27] Thus, the new constitution departed from the spirit of the constitution of 1791 and presaged a distinct evolution toward an authoritarian government.[28]

The fate of Poland after World War II was decided at the Yalta Conference in February 1945. Although the conference declared that the Polish government was to be created on the basis of free and democratic elections, Poland was, in fact, left in the Soviet-controlled zone. The Polish "government of national unity," which included leaders of the Polish government-in-exile and the Soviet-sponsored provisional government, was short-lived. In April 1946 a mass referendum was called to determine the composition of the Polish parliament and to determine the public attitude toward agrarian reform, nationalization of industry, and Poland's western frontiers. The elections of January 19, 1947, which were not fair and in which the leaders of the anti-communist opposition were in constant threat of persecution, proved that the government was not "democratic and free." Top Polish military commanders and underground activists linked to the London-based government-in-exile were under permanent police surveillance. In October 1947 Stanisław Mikołajczyk, the deputy premier and former prime minister of the London government, was accused of being "an ally of foreign imperialists" and left Poland. Despite Soviet assurances to the Western powers at Yalta, Poland remained under total control of the pro-Moscow puppet government, headed by the president, Bolestaw Bierut, and the premier, Józef Cyrankiewicz.

The organization of governmental structures was initially regulated by a statute called the "Little Constitution," passed on February 19, 1947. In 1952 the full-fledged constitution was adopted. As this constitution shared all fundamental features characteristic of socialist constitutions, it will be analyzed in the section dealing with the common core of socialist constitutionalism.

Soviet Constitutions

CONSTITUTIONAL LEGACY OF TSARIST RUSSIA

The constitutional legacy of tsarist Russia was not impressive. Rapid Westernization and remarkable industrial development at the turn of century could not obscure the backwardness of the Russian political system.

Russia's constitutional experience was much less impressive than in its Polish territories. Before 1906, except for the brief period of activity of the "Zemsky Sobor,"[29] popular dissatisfaction found no official representation before the tsar.[30] Successive forced steps to move toward a more democratic government failed.

A general strike and peasant uprising frightened Tsar Nicholas II. On August 19, 1905, he issued regulations for the election of a national representative body based on a restricted suffrage.[31] On October 30 he signed an imperial manifesto in which he promised (1) to grant the inviolability of the person, freedom of conscience, freedom of speech and assembly, and the right to form unions; (2) to permit participation in the Duma (representative body), leaving development of the principle of universal suffrage to the newly established legislative procedure; (3) to establish, as an immutable right, that no law should become effective without the Duma's approval; and (4) to vest in the Duma the right to supervise the legality of the imperial administration's work.[32] The Russian empire's fundamental laws of May 6, 1906, still provided that "the Emperor of all the Russians wields the supreme autocratic power. To obey his authority, not only through fear but for the sake of conscience, is ordered by God himself."[33] The emperor, along with the council of the empire and the imperial Duma, jointly held legislative power. The initiative in all legislative measures, however, belonged to the emperor.[34]

On the basis of indirect elections with limited suffrage, the first Duma was instituted by the imperial order of August 19, 1905. The Duma never acquired the functions usually associated with a genuine parliamentary legislature and was dissolved on July 21, 1906.[35] The second Duma met on March 5, 1907,[36] and was dissolved on June 16, 1907, "because of its failure immediately to surrender, upon the demand of the government, fifty-five Social Democratic members accused of plotting against the government."[37] The third Duma met on November 14, 1907.[38] In violation of the fundamental laws, the emperor issued election laws that made suffrage even more unequal than before.[39] The fourth Duma was called in 1912, and it survived until

1917. Its legislative initiative was weak, and it remained mostly an instrument of mild criticism of the government.

Polish nationalists, led by Roman Dmowski, were active in each Duma that preceded World War I. The nationalists tried to interest the Russian government in taking over the Polish nation, and at the outbreak of war they pressed the emperor's administration to proclaim Poland's liberation as a war goal.

The Revolution did not bring about rapid constitutional changes. Even after the abdication of the tsar and the Revolution's victory, the Bolsheviks remained a small and relatively unpopular minority among other revolutionary parties.[40] The subsequent overthrow of the provisional government and the seizure of power by the Bolsheviks did not give them a decisive majority in the electoral bodies—the soviets and the constituent assembly. The assembly where the Bolsheviks gained only 25 percent of the vote (175 of 707 seats) was promptly dissolved.[41] "After one day, when [the Bolsheviks] were unable to compel the Constituent Assembly to do their bidding, armed guards under their control closed the session. Thus ended the only genuinely elected legislative body during the whole period of Soviet rule."[42] Lenin commented that life and revolution pushed the constituent assembly into the background.[43] The soviets (councils of workers' and soldiers' delegates), which were more sensitive to revolutionary rhetoric, survived. "All power to the Soviets" meant, however, controlled participation under leadership of the party that had taken power by force.[44]

These events accounted for Lenin's belief that the Revolution could be rescued only without democracy, and, if it was to be a Bolshevik revolution, he was absolutely right. The Bolsheviks, masters of grasping power and of backstage manipulations, could not lead Russia along a parliamentary path. The party seized power and, as many Bolshevik leaders explicitly admitted, it could not relax its domination without the risk that it would be swept from power altogether.[45] Even if Lenin believed that in the future it would be possible to reconvert the dictatorship of the party into a dictatorship of the proletariat, actual practice proved that the party could never renounce its position without risking total defeat.[46] The forced "education" of the masses appeared to be completely unsuccessful. In this sense, reality undoubtedly solidified Lenin's theoretical totalitarian construction.

THE SOVIET REVOLUTIONARY CONSTITUTION OF 1918

Characterizing the constitution-making process, Christopher Osakwe wrote: "The making of a Soviet Constitution has all the trappings of a theatrical

show. The preparation leading to the staging of the show is elaborate, exhaustive, and behind the scene. At the point during which the general public is brought into the process, the script for the play has been written, the cast of actors who will play assigned roles has been carefully chosen, and the general manager for the play has been picked."[47]

In the spring of 1918 the All-Russian Central Executive Committee of Soviets excluded from its membership representatives of "anticommunist" socialist parties.[48] In this situation the Bolsheviks decided it was the right time to give their power structures a constitutional sanction. The leaders of the Revolution had no illusions about the constitution's declaratory character. The act was recognized as part of a superstructure that was supposed to describe rather than prescribe the organization of power. Lenin did not take interest in the constitutional works or comment on them in his writings. Edward Carr wrote: "The period of drafting of the Constitution was one of grave and continuous crisis both in economic and in external policy, which threatened the existence of the regime and left little leisure for smaller preoccupations. . . . The Constitution was scarcely expected to last as a working instrument. . . . In these circumstances it is not surprising that the principal leaders themselves took no personal part in the work."[49]

On January 28, 1918, the Third All-Russian Congress of Soviets adopted a resolution "On the Federal Institutions of the Russian Republic," announcing that the Central Executive Committee (CEC) would draft principles of the constitution.[50] On April 1, 1918, the CEC, following the decision of the Central Committee of the Bolshevik Party, appointed a constitutional committee composed of fifteen members such as Yakov Sverdlov, president of the CEC; Joseph Stalin, the commissar of nationalities; Nikolai Bukharin, editor of *Pravda;* Mikhail Pokrovski, a well-known Marxist professor; and Steklov, editor of *Izvestiya.*[51] The committee worked for three months, and in July 1918 it submitted the text to the Fifth Congress of Soviets, which adopted the constitution on July 10, 1918.[52] Then followed the killing of the former tsar and his wife, his children, members of his family, his personal physician, and three servants on July 17, 1918, in Ekaterinburg.[53] Two days later, the constitution, incorporating the Declaration of Rights of the Laboring and Exploited People approved in January 1918, was formally promulgated.[54]

The Declaration of Rights of the People (described the constitution's first four chapters) was followed by general provisions of the constitution. The general provisions characterized the Russian republic as a federation that recognized equal rights of all citizens (article 22), guaranteed freedom of speech, opinion, and assembly (articles 14–15), recognized freedom of con-

science (article 13), promised the separation of school and state from the church (article 13), and promulgated free general education (article 17).[55] The constitution deprived "all individuals and groups of individuals [of] the rights which could be utilized by them to the detriment of the Socialist Revolution" (article 23).[56] With respect to work, the duty of every citizen was proclaimed in the constitution's motto, "He shall not eat who does not work."[57]

The constitution vested the supreme power of the republic in the All-Russian Congress of Soviets and, in periods between the convocation of the congress, in the All-Russian CEC.[58] While the Fundamental Law referred to equal rights of all toilers, the drafters of the law were aware of the different interests of peasants and workers. To counterbalance the considerable numerical superiority of peasants over workers with equal suffrage, the law provided that "the All-Russian Congress of Soviets is to be composed of representatives of urban Soviets (one delegate for 25,000 voters) and of representatives of the provincial congresses of Soviets (one delegate for 125,000 inhabitants).[59] In this way, the constitution granted as much representation to one town dweller as to five country dwellers. The All-Russian Congress was to elect an All-Russian CEC of not more than two hundred members that had supreme legislative, executive, and controlling power between the convocation of congresses.[60] The general management of the affairs of the republic was vested in the Council of People's Commissars appointed by the CEC.[61] William H. Chamberlin commented: "Many provisions of the Constitution were of purely theoretical interest, because they were not carried out in practice. Real power rested not with the Soviets, but with the Communist Party; and those provisions of the Constitution which prescribed the methods of election, the frequency of convening Soviet Congresses, etc., were neglected or violated."[62]

THE FIRST POSTREVOLUTIONARY CONSTITUTION OF 1924

William Munro observed that the constitution of 1918 "was not framed by men who had been elected for that purpose nor was it submitted to the Russian people for acceptance. But it served as a starting point, and five years later it became the model on which a constitution for the entire Union of Socialist Soviet Republics was framed.[63]

The consolidation of communist power in the Soviet Union required consideration of the nationality question. To restore a centralized administration, the Bolsheviks had to formally prescribe the links between Moscow and the non-Russian nationalities. The steps toward federation came from the various

republics and led to the transformation of the Tenth All-Russian Congress of Soviets into the First Congress of the Union of Socialist Soviets Republics in December 1922. On December 30, 1922, the congress declared that the state is a Union of the Soviet Socialist Republics.[64] The formal federate character of the Union was to be confirmed by the new constitution.

On January 10, 1923, the presidium of the CEC appointed a commission headed by Stalin to draft the constitution's principles.[65] In fact, as the sequel showed, "the crucial decisions on the constitution did not rest either with the commission or with any organ of [the] state, but rather with the Politburo or with some informal group of leaders within the party."[66] The new federal constitution was adopted on July 6, 1923, and ratified on January 31, 1924, shortly after Lenin's death.[67]

The Fundamental Law began with the Declaration of the Union of the four republics: Russian, Ukrainian, White Russian, and Transcaucasion, which consisted of the republics of Azerbaijan, Georgia, and Armenia.[68] Supreme authority was vested in the Soviet congress, which still comprised the representatives of the soviets cities' (one delegate for each 25,000 voters) and provincial soviets (one delegate for each 125,000 inhabitants).[69] The sessions of the congress were to convene once a year.[70] The CEC of the Union was a bicameral organ that consisted of the Council of the Union, a body of 371 members elected by the congress from among the representatives of the republics in proportion to each republic's population.[71] The CEC also included the Council of Nationalities, which was composed of 131 delegates, five from each union republic or autonomous republic, and one from each autonomous region.[72] Delegates were elected by each republic's or region's executive committee. Between sessions of the CEC, supreme authority was further delegated to its presidium composed of twenty-one members.[73] The presidium was to be the CEC's highest interim legislative, executive, and administrative organ.[74] The Council of the People's Commissars remained the executive and administrative organ responsible to the CEC and its presidium.[75] Carr observed:

> To sum up the changes in the Soviet structure resulting from the 1923 constitution is a difficult task. The student is confronted at the outset by one curious paradox. The Russian Socialist Federal Soviet Republic (RSFSR) has the word "federal" in its title and was constantly referred to as such; yet it was, in strict constitutional terms, a unitary state, incorporating a number of subordinate, though partially autonomous, units. In the constitution of the USSR, and in official documents relating to it, the words "federal" and "federation" were avoided. Yet the USSR was, in essential points, a federation.[76]

THE STALIN CONSTITUTION OF 1936

After the years of war communism, Stalinist Russia entered the period of collectivization of agriculture and of industrialization. The years 1932 and 1933 were stigmatized by the "forgotten holocaust"—the famine in the Ukraine. Stalin dumped millions of tons of wheat on Western European markets, while in the Ukraine men, women, and children were dying of starvation at the rate of 25,000 a day, or seventeen people per minute.[77] Seven to 10 million people perished in a famine caused not by war or natural disaster, but by a ruthless decree.[78] The famine was followed by a period of purges in the party and sham trials that resulted in the arrest and execution of hundreds of thousands of people.[79] In the midst of the Great Terror, Stalin announced his will to adopt a new constitution. The constitution was to be an element of his coverup of his system's atrocities; it was "to convince the world that the Soviet Union was, after all, a state run according to Law."[80] Victor Kravchenko, a defector from the Soviet Union, noted: "To survive, man needs hope even as he needs air. Like millions of others, I reached out for the promise of more human rights for the ordinary Soviet citizen. We grasped at the straw of hope to save ourselves from sinking to the lower depths of despondency. Except for the minority of hard-bitten cynics, to whom the Constitution was just one more hoax, Communists especially wanted to believe."[81] The new constitution was to democratize electoral law and to declare that the Soviet Union, after eliminating its antagonistic classes, was to become the society of all the people.[82]

On February 1, 1934, on Stalin's motion, the plenum of the central committee of the party instructed the chairman of the council of commissars, V. M. Molotov, to present to the forthcoming Seventh Congress of Soviets a proposal to amend the constitution.[83] In February 1935 the CEC formed a constitutional commission,[84] formally chaired by Stalin and consisting of thirty-one members.[85] The commission included Bukharin, who later confided that "he alone, with a little assistance from [Karl] Radek, had written the document from first word to last."[86] In the spring of 1936 the commission prepared a draft of a new constitution, a full-fledged product of democratic centralism, that was submitted for nationwide discussion. In late April 1936, Stalin prepared for the trial and execution of a "Trotskyite-Zinovievite Terrorist Center," but party propaganda claimed that everyone was talking about the Stalin constitution.[87] Stalin's decorative deceit was fully successful. On June 1, 1936, a plenum of the central committee approved the draft, and on December 5, 1936, the Eighth Extraordinary Congress unanimously adopted

the constitution's final text. December 5 was declared a national holiday: Day of the Constitution. Soviet newspapers exclaimed: "Let the balalaikas ring, Raise anew the chorus, Isn't it a happy thing—The road that lies before us?"[88]

Article 1 of the constitution declared that the Union of Soviet Republics was a "socialist state of workers and peasants."[89] Soviets of Working People were to be chosen on the basis of "universal, equal and direct suffrage by secret ballot."[90] The constitution recognized the right to work, rest, and leisure;[91] the right to maintenance in old age and sickness;[92] the right to education;[93] equal rights for women and for all citizens irrespective of nationality or race;[94] freedom of religion;[95] freedom of speech, press, assembly, and demonstration;[96] freedom of association;[97] and guarantees of the inviolability of the person,[98] domicile, and correspondence.[99]

The constitution replaced the congress of soviets and the CEC with one bicameral organ of legislative power, the Supreme Soviet of the Union of Soviet Socialist Republics, composed of the Soviet of the Union and the Soviet of Nationalities.[100] The Soviet of the Union was to be elected on the basis of one deputy for every 300,000 people.[101] The Soviet of Nationalities was elected by the same universal, equal, direct, and secret suffrage on the basis of twenty-five deputies for each union republic, eleven for each autonomous republic, five for each autonomous region, and one for each national area.[102] Executive power belonged to the council of ministers of the USSR[103] which was to be appointed by, and responsible, to the presidium.[104] The presidium was composed of thirty-three members elected by a joint sitting of both chambers.[105]

In a way symptomatic of Stalin's era, two years after the constitution was adopted, the main drafters of the "most democratic Constitution in the world,"[106] including Bukharin and Radek, were condemned to death for espionage, terrorism, and conspiracy. As a result of the show trials, the old guard of Bolsheviks was executed: in 1936, Grigory Zinoviev, Lev Kamenev, and I. N. Smirnov; in 1937, Karl Radek, Grigory Pyatakov, and Grigory Sokolnikov; in 1938, Nikolay Bukharin, Aleksky Rykov, N. N. Krestinsky, Khristian Rakovsky, and G. G. Yagoda.[107] Leonard Schapiro has written:

> When the smoke of battle lifted[,] the pattern of the operation became discernible. Most of the old native leaders who still survived in 1937 had now disappeared. But below them, considerable inroads had also been made into the network of subordinate secretaries, those men who had been trained during the 30s. In the Ukraine, for example, in 1938, nearly half of the secretaries of party organizations were once again re-placed. In Georgia, between early 1937 and early 1939, 260 out of a total of less than three hundred first, second and third secretaries of local party committees were re-

placed, as well as several thousand other party officials. It was a salutary lesson to those who wished to rise in the party that nothing less than complete subordination of national interests to the interests of the USSR, as decided by the party leaders in Moscow, would be accepted.[108]

THE POST-STALINIST CONSTITUTION OF 1977

Stalin's death in 1953 resulted in a wave of popular unrest: a revolt of East German workers that year, turbulence in Siberian camps soon afterward, and upheavals of Hungarian and Polish workers three years later. His death also marked the beginning of attempts to reassess the significance of communism in the Soviet bloc. Thousands of political prisoners were released from labor camps, and the new leadership had enough time to realize that some mechanisms of the system were obsolete and needed rapid modernization. De-Stalinization, no matter how serious its concessions, undoubtedly stimulated widespread discussion of the theory and practice of communism, a discussion that embraced constitutional regulations.

The newest constitution-making process, which lasted more than fifteen years, was heralded even more pompously by Stalin's successors than by Stalin himself. Robert Sharlet has written:

> The drafting, discussion, revision, and ratification of the 1977 constitution reflected the scope and limits of de-Stalinization as it affected the policy-making process. Comparing the "making" of the constitutions of 1936 and 1977, it is apparent that the high concentration of political resources and the severely restricted access to policy-making arenas that were characteristic of Stalinism have given way to a greater dispersal of political resources and far more access to these arenas in the post-Stalin period. An obvious comparative measure is that the 1936 constitution was little more than a year and half in making, including the public discussion, while preparation of the 1977 constitution required nearly two decades of intermittent activity.
>
> Certain similarities are evident in the constitution-making processes of 1936 and 1977. Stalin had formally chaired the constitutional commission, and his successors, Khrushchev and Brezhnev, later followed suit, underscoring that a new Soviet constitution was considered not merely a technical instrument of government but a policy statement of some magnitude. Secondly, the political symbolism of the two documents is similar; both followed periods of intensive internal change. . . . Finally, the ultimate products . . . were intended to consolidate, institutionalize, and legitimate Stalinism and post-Stalin reform respectively.[109]

An enormous number of amendments were introduced to the Stalin constitution, until it was apparent that, rather than amending the old constitution

again, a new constitution should be drafted.[110] A constitutional commission was formed in 1962 that originally consisted of ninety-seven members.[111] The commission's draft, adopted by the plenum of the Central Committee of the Communist Party of the Soviet Union on May 24, 1977, was subject to further nationwide discussion in the media, during which more than 150 amendments and clarifications were made.[112]

At the Seventh Extraordinary Session of the Ninth Convocation of the USSR Supreme Soviet on October 7, 1977, the constitution was adopted.[113] Christopher Osakwe commented:

> To the Western student of Soviet constitutional law, the adoption of the long-awaited USSR Constitution of 1977 will go down in history as the greatest non-event of the decade. Despite all official proclamations to the contrary, the new document does not break any new ground in Soviet law. It creates no meaningful new expectations in the minds of the ordinary Soviet citizens, and it fails to promulgate a new developmental policy for Soviet society. Nevertheless, a deliberate effort was made to involve a cross section of the Soviet population in the last stages of its adoption. The impact of this citizen involvement is questionable.[114]

Comparing the Fundamental Laws of 1936 and 1977, it is apparent that the changes introduced should not be overestimated. The act of 1977 did not refer to the "Society of workers and peasants."[115] The state was not portrayed as a "dictatorship of the proletariat" but as a "socialist all-peoples state," an "indissoluble alliance of workers, peasants, and intelligentsia."[116] The constitution emphasized the democratic foundations of the Soviet system.[117] It declared that the Soviet state is organized on the principle of democratic centralism that "combine[s] unified direction with initiative and creative activity."[118] The leading and guiding role of the Communist Party was emphasized.[119] The constitution introduced separate chapters on "The Economic System,"[120] on "Social Development and Culture,"[121] and on "Foreign Policy."[122] The chapter on the basic rights of citizens was extended, and the document declared that the enjoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state, nor should it infringe on the rights of other citizens,[123] meaning that citizens' rights were constitutionally guaranteed only when exercised in a manner consistent with the interests of society as defined by the party, "the nucleus of the Soviet political system."[124]

The Supreme Soviet of the USSR remained the highest body of state authority.[125] The bicameral body of 1,500 deputies, as before, was composed of two chambers equal in numbers.[126] Moreover, the Supreme Soviet remained the most efficient legislative body in the world. It was expected to

approve a significant number of legal instruments during two relatively short convocations a year, with essentially no dissent permitted. The presidium remained the permanent nucleus of the legislative body, and the council of ministers was designated as the highest executive and administrative body.[127]

Outline of the Constitutional Histories of States from the Former Ottoman and Austro-Hapsburg Empires

The constitutional history of the Eastern European members of the Soviet bloc hardly reached beyond the turn of the nineteenth century.

ROMANIA

The early history of the Romanians dates back to the period of Roman domination over Dacia, the territory bordered on the north by the Carpatians and on the south by the Danube. Ancient Dacia, among other lands, included Transylvania, often regarded as a cradle of the Romanian nation. In the Middle Ages the Walachians, or Vlachs, established the two principalities of Walachia and Moldavia on this territory. Through the thirteenth to fifteenth centuries the territory came under the influence of Hungarians and Poles; it fell, finally, in the sixteenth century under a Turkish rule that lasted for three centuries.

Modern Romania was established in 1861 as a result of the Crimean War and national movements in the principalities of Moldavia and Walachia. The Romanian constitution, adopted in 1866, was modeled on the Belgian constitution of 1831. It was amended in 1923 and was subsequently replaced by the authoritarian royal constitution of 1938.

During World War II, Romania initially declared its neutrality. However, it soon was forced to accept pro-German cabinets. Romania's King Carol II abdicated in favor of his adolescent son, Michael. The 1938 constitution was suspended and General Ion Antonescu rose to dictatorial power. The coup d'état of August 1944 disposed Antonescu and led to war with Germany. By war's end, Romania was left under the increasing control of Soviet forces that established authority based on the Soviet model. In 1944 some provisions of the 1923 constitution were restored. In December 1947, simultaneous with the abdication of King Michael and the establishment of the People's Republic of Romania, the constitution of 1938 was abolished. A new constitution was promulgated on April 13, 1948. It fell within the Soviet model, and the second socialist constitution of 1952 was "nearly a reproduction" of Sta-

lin's constitution of 1936. Through all of its communist history, Romania was ruled by despotic and unchallenged leaders, until 1965 by Gheorghe Gheorghiu-Dej, and then by Nicolae Ceauşescu.[128]

BULGARIA

Although the history of the early Bulgarian state goes back to the sixth century, the Bulgars fell under Turkish rule in the fourteenth century (1396). Bulgaria remained part of the Turkish Empire until the Congress of Berlin of 1878, when a new autonomous Bulgarian principality was established. The Tirnovo constitution of 1879, the first Bulgarian constitution, was praised as one of the most democratic in Europe. The new state, however, lacked the experience needed to establish stable democratic mechanisms provided by the organic law. Hence, over the next five years the constitution was suspended and restored. The principality was involved in numerous Balkan conflicts, during which the more independent rulers were intermingled with Russian-dominated governments. In 1908, Bulgaria, taking advantage of a revolution in Turkey, declared an independent kingdom with Ferdinand I of Saxe-Coburg-Gotha as tsar.

In the Balkan Wars and in the early stages of World War I the Bulgars regained some territory that they lost under the Treaty of Neuilly on November 27, 1919. Tsar Ferdinand abdicated in October 1918 in favor of his son, Boris III. In the interwar period, Bulgaria, involved in conflicts with Greece, experienced coups d'etat and dictatorial regimes.

In World War II, Bulgaria was allied with Germany, but it refused to declare war on the Soviet Union. It finally withdrew from the war in 1944 and proclaimed neutrality. Bulgaria appealed for an armistice with the Soviet Union, which was granted on September 9, 1944. Soon thereafter, a Soviet-controlled government was established. The first socialist constitution of 1947 followed the Stalinist model, to be replaced by the 1971 constitution that declared Bulgaria a "socialist state" and made adjustments typical of the post-Stalinist era.[129]

ALBANIA

The Republic of Albania lies in southeastern Europe on the Balkan Peninsula and is bordered by Yugoslavia, Macedonia, Greece, and the Ionian and Adriatic seas on the west. Albanians are documented as living in this area since the time of the Roman empire. Following the division of the empire, in A.D. 395, Albania became the Byzantine provinces. Although invaded fre-

quently by the Bulgarians, Serbs, Venetians, and Normans, the Albanians remained under the rule of the Eastern empire throughout the Middle Ages. In the fifteenth century the territory of Albania was invaded by the Turks and was incorporated into the Ottoman empire in the second part of that century.

Although the Turks never have fully controlled the entire territory of modern Albania, Albania did not gain its independence until the second decade of this century, when, as a result of an extended revolt against the disintegrating Ottoman empire, the independence of Albania was recognized at the Great Powers' 1912 conference in London. Still, the selection of German prince Wilhelm of Wied as Albania's *mbret* (king) resulted in internal strife that lasted until the outbreak of World War I. The war brought periods of Italian, Greek, Serbian, and Austrian occupation, occupations that drained the country economically and contributed to Albania's enormous hardships.

Reestablished in 1920, Albania was proclaimed a constitutional monarchy in 1928 when its former president Ahmet Zogu gave the country its first constitution and was crowned as Zog I. The constitution of 1928 provided for a two-chamber parliament composed of the council, whose members were appointed by the king, and the elected chamber of deputies. In Albania, with an extremely high percentage of illiterates, the act granting electoral rights only to literate men and the right of the king to suspend constitutional freedoms in the case of internal turbulence were hardly liberal.

The alliance of King Zog with Fascist Italy did not protect Albania from Italian invasion in 1939. Under the Italian dictate, Albania was granted a new constitution designed to solidify a union between the countries. In 1941 the Italians were driven back by the Greeks who, in turn, were overrun by the Germans.

The military successes of the Soviet Union strengthened the Albanian Communist Party, headed by Enver Hoxha, a young teacher educated in the West. At the end of 1945 the Albanian communists called a meeting of a constituent assembly, which on January 11, 1946, proclaimed the establishment of the People's Republic of Albania. Three months later, on March 14, the first communist constitution of the country was adopted. In the late 1950s, Albania's relations with the post-Stalinist Soviet Union cooled down and an alliance was formed with China, bringing about the country's virtual isolation. In 1977, Albania adopted a second postwar constitution devised to emphasize the great progress being made by the country on its way to communism. To highlight this transformation, the constitution added the word "socialist" to the name of the state, and, since then, the state has been called the People's Socialist Republic of Albania.

CZECHOSLOVAKIA

In the early Middle Ages the Czechs, who belonged to the western group of the Slav family, lived in the Central European region called Bohemia, Moravia, and Czech Silesia.[130] In the ninth century a Slavic prince, Mojmír I, and his successors, Rastislav and Sviatopluk, set up in the territory a kingdom known as the Great Moravian Empire. With that empire's disintegration during the early tenth century, the Czechs came under the control of the Holy Roman Empire, and the Slovaks found themselves under the Magyar influence. The Magyars defeated the Moravian ruler, Sviatopluk, destroyed his empire in 907, and in the eleventh century strengthened the links between Slovakia and Hungary, which lasted until 1918.

In the second half of the fourteenth century Bohemia enjoyed a period of glory, when Prague, under the reign of Charles IV, became the capital of the empire. During the fifteenth and sixteenth centuries the Czechs experienced periods of religious wars and were incorporated into the Habsburg empire after the Thirty Years War (1618–1648). Czech domains remained part of the Austrian empire until its disintegration after World War I. The war drew the Czech and Slovak nationalist movements closer together, resulting in the formation of Czechoslovakia.[131]

On October 28, 1918, the independence of Czechoslovakia was proclaimed, and on November 13, 1918, a provisional constitution was promulgated.[132] This constitution was replaced by the definitive constitution of February 29, 1920. The six-section 1920 constitution borrowed heavily from the 1875 French constitution of the Third Republic. The preamble defined Czechoslovakia as a "cultured, peace loving, democratic, and progressive" republic.[133] The legislative power was vested in a bicameral parliament, elected with universal and equal suffrage, by a direct and secret ballot, on the principle of proportional representation.[134] Executive powers were entrusted to a strong president, whose office was analogous to the French presidency; the president was elected by the national assembly (a joint session of both chambers), which in turn appointed the prime minister and a cabinet. The constitution created an independent judiciary and established a constitutional court that followed the Austrian "centralized" type of judicial review, confining the power to review the constitutionality of laws to a single judicial organ.[135] D. W. Paul observed:

> The positive achievement of the First Republic should not be underestimated. For twenty years Czechoslovakia had remained a viable and true democracy, despite being surrounded by increasingly undemocratic and hostile states. Its economy, despite weak

spots, was one of the strongest and most advanced in Europe. Whatever their grievances, Czechoslovakia's minorities were treated with less ethnic discrimination than those of its neighbors—and, to the credit of the dominant Czechs, the other nationalities were better off than the Czechs had been under Austrian rule. This unique interwar experiment with the multinational democracy came to an end following the Munich Agreement.[136]

The Munich Pact of 1938 was followed by Germany's annexation of the western territories of Czechoslovakia, known as the Sudetenland.[137] This annexation precipitated the fall of the First Czechoslovak Republic. President Edvard Beneš, denouncing the Munich agreement as a betrayal by France and Britain, resigned under pressure from Berlin on October 5, 1938, and left the country. The Second Republic yielded to Slovak demands for self-government and was officially renamed "Czecho-Slovakia" to emphasize that confederative association.[138] Soon after, Germany annexed the remaining Czech Lands as the "Protectorate of Bohemia and Moravia," while Slovakia was proclaimed a separate state under German "protection," although some portions were annexed by Hungary.[139] World War II tightened German control over the Czech and Slovak territories.

As in other East-Central European countries, Soviet "liberating" maneuvers placed the communists in the Czechoslovak government for the first time in 1945 and solidified their rule in 1948.[140] A new Soviet-style "constitution" was promulgated on June 7, 1948. On July 11, 1960, Czechoslovakia adopted its second socialist constitution, which upgraded the country's "people's democracy" status to a "socialist republic." The 1960 constitution was created primarily for its propaganda value, allowing the communists to claim that Czechoslovakia was the second country to achieve socialism. (The USSR had made this claim in 1936.)[141] The 1960 constitution has been amended by six constitutional laws,[142] the most important of these being the October 31, 1968, constitutional law that created a Czechoslovak federation consisting of the Czech Socialist Republic and the Slovak Socialist Republic.[143]

HUNGARY

The fall of the Austrian-Hungarian empire after World War I also helped the Hungarians dissolve their links with Austria. On November 16, 1918, Hungary was proclaimed a republic.[144] In the spring of 1919, in the midst of internal disorder and the various nationalistic demands of Romanians, Czechs, and Serbs, communist propaganda successfully spread a message that a new state, if in alliance with Soviet Russia, can survive only as a dictatorship of the

proletariat. On March 21, 1919, a new government, which consisted of social democrats and communists, established the Hungarian Soviet Republic. The republic lasted for 133 days. On April 2, 1919, the revolutionary council adopted a temporary constitution, and on June 23, 1919, the national Soviets proclaimed a comprehensive constitution of the Hungarian Soviet Republic.[145] In August, however, as a result of the Romanian intervention and under pressure from Allied forces, the Hungarian Soviet Republic ceased to exist.

A monarchic system was restored by Constitutional Statute I of February 28, 1920, "On the Restoration of the Constitutional System and the Temporary Supreme Power." Hungary remained a kingdom without a king, as the statute declared that "the monarchic power ceased to exist" and the functions of the head of state were vested in a regent.[146] On March 1, 1920, the national assembly by a vote of 131 to 10 elected Admiral Miklós Horthy regent. Horthy remained in power for the next twenty-three years.

Although Hungary referred to the country's "one thousand years of constitutional traditions," it chose not to adopt a single constitutional act until after World War I. At that time the Hungarian political system was established by several constitutional laws, the most important of them Statute I of 1920, which vested legislative power in the national assembly. A second chamber was established by Statute XXII of 1926. Executive power was entrusted to the regent and the ministers. The ministers were responsible to parliament but were nominated and recalled by the regent. The premier, nominated by the regent, automatically became a leader of the ruling party—the Party of Unity. The regent enjoyed the same privilege as a monarch. With the exception of organic laws, he had a suspensive veto over all legislative actions, by which he could decline his signature and return legislative acts to the assembly for reconsideration. Although his veto could be overruled by the assembly, in 1937 he was given a right to veto the same act twice in six months.[147] The successive constitutional acts increased the power of the regent, who was empowered to nominate forty senators at first and later, during the war, eighty-seven.[148] In 1942, Horthy processed the nomination of his son, Istvan Horthy, as vice regent. Istvan Horthy, however, died in a plane accident, and no new vice regent was elected.

When Germany attacked Poland in 1939, Hungary proclaimed itself a nonbelligerent and refused a request to allow the German army to pass through its territory. However, on June 27, 1941, under strong German pressure, Hungary declared war on the Soviet Union and found itself at war with England and the United States. The ill-equipped Hungarian army suffered serious losses, and Horthy's government faced the dilemma of either fully cooperating with the Germans or acceding to the German occupation of

Hungary. Horthy's plan to slowly withdraw from military action against the Soviet Union was blocked by the Germans. Horthy was then deported to Germany, and the functions of regent passed on to Ferenc Szálasi of the fascist organization Crossed Arrows, who combined the functions of head of state and head of government.[149]

In the midst of the fighting, a new provisional government was formed at Debrecen on December 23, 1944. Hungary was to share the fate of other Soviet-liberated countries of East-Central Europe. After some early experiences with coalition governments and provisional constitutional statutes, the communist-controlled Hungarian parliament adopted the first constitution on August 20, 1949. The "Constitution," wrote W. Solyom-Fekete, "was a slavish imitation of the Soviet-type constitutions, with some variations resulting from the historical and political differences between the Soviet Union and Hungary." According to the constitution, Hungary became a people's republic, which "was the state of workers and working peasants."[150] In 1972 the constitution was amended, and article 2 stated that "the Hungarian People's Republic is a socialist state."[151] Another more important amendment of December 22, 1983, established the constitutional law council, which, as an organ of parliament, was given the right of internal constitutional review. The Hungarian political system became a typical reflection of a model drafted by the Soviets for their European satellites.

2

CONSTITUTIONAL LEGACY

The Confrontation of East and West

The Liberal Tradition in Pre-World War II Constitutions

In discussing constitutional transformations in the socialist states, many questions naturally arise: Are there parallels between the Western and East-Central European constitutional histories? Does Eastern Europe have any liberal or democratic traditions to draw on? Will ties with the West be strong enough to counterbalance the legacy of Soviet constitutional experience? George Schöpflin has written:

> The Western political tradition always emphasized pluralism and the fragmentation of power. In Eastern Europe, which was politically backward, the state played a much more dominant role as the principal agent of change. This resulted in a politically preeminent bureaucracy and a weak society. The independent states of the interwar period were fragmented socially and ethnically and were unable to make much progress toward democracy. However, their record did allow for some political pluralism, which was then destroyed by the Communists after the war.[1]

Schöpflin's points provoke commentary. My first reservation concerns the evaluative elements of his analysis. Although I wholeheartedly admire Western democratic and liberal traditions, I admit that the very attempt to evaluate political culture or political traditions raises my almost instinctive reservations. In public opinion, the terms "progressive" or "backward" themselves become measures of what political models are desirable and good or undesirable and bad. The problem is that it is often difficult to estimate "social progressiveness" in such spheres as art, philosophy, literature, or politics. Some components of political culture are subject to evaluation, while others can only be described. For example, it is possible to measure the degree of a society's political knowledge or the amount of information available to the public, but one can hardly evaluate social emotions or attitudes. In the same way, political traditions are a function of a variable that is the sum of its social,

economic, and geopolitical elements. These elements always have some relativistic aspects and can scarcely be evaluated as clearly "progressive" or "backward." Admittedly, one can examine liberal or democratic elements of Western or Eastern traditions; one can even argue that from the perspective of social well-being, the Western model led to greater economic prosperity. But in terms of general evaluation, Western and Eastern models are not "backward" or "progressive," "good or "bad"; they are simply different.

Although the West, not the East, made greater contributions toward democracy and placed more emphasis on political pluralism and the fragmentation of power, these visible symbols of the West are not synonymous with progress. As Montesquieu remarked almost 250 years ago, the value of human arrangements is always relative. The East now faces the prospect of a quick liberalization and democratization. Questions remain: How much stomach does it have to digest these reforms? What is the right speed of transformation to secure the "progressive" character of change?

A second reservation concerns a descriptive element of the traditional East-West confrontation. Careful examination fails to confirm the often-claimed clear-cut distinction between the political traditions of Eastern and Western Europe. Any attempt to set the democratic, liberal, and pluralized models of Western political culture against nondemocratic, state-controlled, statist Eastern models can be accepted only with many reservations.[2]

For example, by tracing the roots of Western European constitutional government in the British constitutional experience, one sees that, in East-Central Europe, Poland was a country with at least comparably mature constitutional traditions. The sixteenth century was particularly crucial for the establishment of royal authority in both England and Poland. Under the reign of the Tudors, England experienced the golden age of her absolutism. However, the concept of absolute sovereignty was mitigated by the English doctrine that the king is beneath the law and that supreme power is vested not in the king alone, but in the "king in parliament." The principle *lex facit regem* acknowledged that the king was a "fountain of justice," but it required him to be bound by the law that he and his council enacted. The seventeenth century brought more restrains on the exercise of royal authority in England, and the country's political system began to evolve into a mature model of constitutional monarchy.

In comparison, the monarchy in Poland was neither hereditary nor absolute. The elective king was not "divinely appointed," although in theory God was assumed to direct the electorate during each election. Theoretically, the monarch was answerable to no one, save God, but in practice his power was effectively limited by the vast privileges of the gentry and the activity of

the gentry's representation. As in England, power was vested in the "king in parliament," and the king was required to rule justly. The Polish nobility, however, worked out much stronger instruments than the English for the application of their standards to the concept of royal justice. While English absolutism was reaching its peak, the drive toward absolutism in Poland was losing its momentum. The fragmentation of power in Poland was legally guaranteed, and the system of "democracy of the gentry" was well-established.

Looking at other European political models, the French king was distinguishable from the English and Polish monarchs. The king in France was above human law and could override both parliament and custom; his absolutism could be restrained only by contracts he made with his people, by his Christian virtues that required him to rule justly, and by voluntary agreements to enhance the monarchy's prestige and stability. The extent of royal authority was increased in both France and England by the advanced process of unifying the realm through successful financial arrangements at the end of the fifteenth century and by victory over the magnates. The trend to consolidate royal authority in Poland was less successful. The unifying efforts of the Polish kings were counterbalanced by attempts of the Polish magnates—"kinglets" as they were called—who retained private armies, courts, and their own clientele. Hence, Poland—in contrast to England, France, Russia, and Austria—gradually became a grouping of landed estates ruled by individual magnates. The society of nobles gained dominance over royal authority, although Poland's military potential was weakened by the pluralization and fragmentation of power. It was Poland more than any other Western European country that became the early symbol of a liberal and constitutional monarchy.

Not surprisingly, Poland, surrounded by absolute monarchies, could hardly defy competition from systems that vested legislative, executive, and judicial power in one ruler. It is also not surprising that Poland adopted the first written European constitution in 1791. Although the powers established by the constitution were unequal, the Polish constitutional act referred to the doctrine of the separation of powers as the most fundamental principle of good government. The traditional attempt to set the democratic American Constitution and the French constitution of 1791 against the nondemocratic Polish act was verified and corrected. In fact, the Polish constitution did not receive enough attention as an act that concluded the centuries-long development of Polish constitutional institutions.[4]

Hence, the roots of liberal and democratic institutions can be found in the traditions of both the Western and East-Central European countries. In fact, the confrontation of East and West resulted from nineteenth-century political developments that highlighted the contrast between Western representative

institutions and the absolute empires of Russia, Prussia, and Austria. While Western democracies began to flourish, the restraints imposed on the activities of representative bodies in East-Central Europe successfully hampered the development of constitutionalism until the last decades of the nineteenth century.

Admittedly, the input of nineteenth-century East-Central European constitutional thought into the diffusion of liberal and democratic ideas was not impressive. Russian, German, and Austro-Hungarian states began their constitutional experiments in the late decades of the eighteenth century. Until World War I, Polish, Czech, Slovak, and Hungarian territories were still deprived of sovereignty and were incorporated into Romanov, Hohenzollern, or Habsburg's empires.[5] Bulgaria and Romania joined the family of sovereign states in the last decades of the nineteenth century. The first constitutions adopted by Bulgaria in 1879 and Romania in 1866 formally followed democratic European constitutional models—mechanisms, however, that did not work according to their drafters' expectations.

The clear-cut distinction between West and East evaporated again in the two decades between the world wars. The constitutions adopted by the East-Central European states in the first decade after World War I referred clearly to world democratic and liberal constitutional traditions. The Weimar constitution of Germany (1919), wrote Helmut Steinberger, "contained a comprehensive bill of rights and 'fundamental duties of Germans.' It included not only the traditional liberal rights, freedoms, and liberties but also cultural, social, and economic rights and instituted, under the rule of law, the principles of democracy, of ordered liberty, and social justice. The liberal fundamental rights had their historical roots mainly in the bill of rights of 1848."[6] The constitution of Austria and the constitutional charter of the Czechoslovak Republic of 1920 proclaimed that both countries were "democratic republics" and introduced into their constitutional systems advanced models of judicial review. The Polish constitution of 1921 referred to progressive and democratic traditions of the Polish constitution of 1791. The Party of Liberals in Romania adopted a constitution in March 1923 that was based on the constitution of 1866. Romania remained a monarchy, but its constitution sanctioned the principle of the division of powers, extended electoral rights, and gave citizenship rights to Jews. Hungary did not adopt a single document that would set forth the constitutional framework, but it limited—at least originally—the power of the ruling regent by a series of authoritative constitutional documents.

The authoritarian transformations of the constitutional systems of the East-Central European states were similar to the responses of the West Euro-

pean governments to the crisis of the 1930s. Devalued liberal democratic values resulted in fascist dominance in Italy and Spain, brought an end to the Weimar Regime in Germany, and was accompanied by the authoritative changes of the constitutional systems in all East-Central European countries.

The traditional clear-cut distinction between Western and Eastern constitutional traditions requires careful scrutiny. Roots of liberal ideas and democratic constitutional structures can be found in both West and East. The confrontation of these two political models was primarily a matter of nineteenth-century historical development, the East-Central European countries sharing liberal and democratic Western trends in the early years between the two world wars while following the authoritarian mode of political changes in the 1930s. The East-Central European states can draw from their liberal and democratic legacy and from certain fundamental constitutional ideas that, at least in limited past periods, they shared with the West. They have certain knowledge of the essence of world constitutionalism. Their experience with democratic structures, however, is comparatively less impressive than that of the Western European democracies. In addition, the period of Soviet domination had a profound impact on these countries during the past several decades. All former satellite countries will be grappling with this legacy for many years. Hence, the drafters of the new constitutions have to confront a critical question of how to enhance democratic and liberal seeds of their own political culture and set them against the core attributes of socialist constitutionalism.

The Common Core of the Socialist Constitutions

Both Soviet and Western constitutional experts agree that "the constitutions of the socialist countries have [had] common fundamental features characteristic of all constitutions of a socialist type, regardless of their distinctive feature."[7] The experts differ, however, in their evaluation of the general function or character of socialist constitutions. Some Western constitutionalists such as Mauro Cappelletti and William Cohen stress the "declaratory" character of socialist constitutions, a characteristic that stems primarily from the repudiation of judicial review as a "bourgeois doctrine."

Alongside this unitary orientation toward the exercise of state power there has existed in the socialist legal systems a concept of "constitution" which differs greatly from Western theory. In Western Europe the constitution is conceived as a body of more or less permanent rules and principles which express the fundamental value norms of the

state and establish a program for their realization. In the U.S.S.R. and other socialist countries, the constitution has traditionally been conceived as a "superstructure" over the economy and a reflection of the actual socioeconomic results achieved.[8]

The portrayal of a purely "descriptive" role of socialist constitutions has been strongly criticized by Soviet jurists who pretended to believe that their constitutions have had a "prescriptive" character. They used to admit that socialist constitutions contain "programmatic provisions," but they claimed that "the programmatic provisions of a constitution, unlike those of a programme (which do not constitute legal norms), are expressed in legal form and have the force of norms of law."[9] A. Kh. Makhnenko wrote: "What is the place of constitutional norms in the system of socialist law as a whole? Since a constitution is a *fundamental* law, its norms have supreme *juridical force*. All the norms established by conventional laws and other legal acts must be in accordance with constitutional norms."[10]

In fact, the distinction between Western and socialist constitutions does not mean that most Western constitutions have few or no declaratory statements and are confined to nothing more than rules of law while socialist constitutions are manifestoes, codifications of economic will, and declaration of ideals that contain no legal norms.[11]

In most countries of the world, including the socialist ones, constitutions mix legal and nonlegal rules. The real distinction lies in the proportions in which the constitutions confine themselves to the norms of law or provide more general socioeconomic and political statements. General declarations of political or economic objectives are usually provided in preambles. In the socialist constitutions these objectives were elaborated into programs for socioeconomic development of the state. Topics usually covered were a confession of faith in socialism's inevitable victory over capitalism and a statement on the superiority of a socialist form of economy and of socialist ownership; in addition, principles of foreign policy, communist internationalism, republicanism, and populist power were declared.

The clear-cut distinction between Western and socialist constitutions did not mean that socialist fundamental laws contained merely "declarations" or that they were not superior to other laws.[12] It did not even mean that socialist constitutions failed to limit the powers of the institutions they created because they provided no outside judicial review of the constitutionality of laws. Constitutions of some Western countries are not held supreme over legislatures of those countries, and some other constitutions provide no judicial review. The real difference stems from the clear contrast between socialist theory and practice, which made many socialist legal conceptions merely legal fictions.

A constitution's declaratory character does not mean that all constitutional provisions sound like manifestoes. Provisions of fundamental law sound like norms, but they still may lack any real prescriptive character. In this sense they may command no social respect, or they may provide for no politically impartial institutions capable of executing constitutional "rules." This was the case where socialist constitutions, which had never obtained the power of enforcing limitations on communist party-controlled governments, merely became useful decorations adopted to disguise the real, unconstitutional distribution of power. As a result, despite the presence of constitutions, constitutional governments as they are known in Western Europe and in North and South America did not develop in East-Central Europe. Robert G. Neumann wrote:

> There is a basic difference *between constitutions* in a democracy and dictatorship. In a democracy a constitution, whether written or unwritten, whether supported by judicial review or under a system of legislative supremacy, is designated to limit, to restrain. Constitutional government in the Western sense is therefore limited, restrained government. But limitation and dictatorship are mutually exclusive terms, and while satellite Europe has a number of interesting constitutions it does not have constitutionalisms.[13]

A glance at socialist constitutions shows that, in addition to a declaration of political objectives, they all contained descriptive outlines of political and economic systems. Following Soviet doctrine, they ascribed sovereignty to the people and declared that the source of power is "in the will of the people."[14] After World War II, Soviet jurisprudence proclaimed that the Soviet Union was entering a phase of mature socialism in which classes would disappear forever, and even the remnants of the bourgeoisie would be destroyed. Society was to become "the union of all the toilers" and "the organization of all the people." The classless society was strengthened as a result of the dictatorship of the proletariat, but it was claimed that society no longer needed that dictatorship. Finally, the Soviet constitution of 1977 confirmed the thesis that the Soviet state had passed the stage of dictatorship of the proletariat and entered a new phase of the mature, classless society.[15] Chkhikvadze wrote: "This new state [of the society of all the people] is marked, firstly, by the fact that the law is an expression of all classes and social sections of society, without exceptions, in the form of the state, and there is no class or social section in the Soviet Union which is antagonistic in respect of the Law or vice versa."[16] After a strong expression that authority had to belong entirely and exclusively to the toiling masses, the socialist constitution claimed that a socialist state created a democratic apparatus of authority and that the people exercised power

through their authorized representatives. The Soviet constitution of 1977 contained a provision that declared: "The Soviet state is organized and functions on the principle of *democratic centralism* namely the electiveness of all bodies of state authority from the lowest to the highest, their accountability to the people, and the obligation of lower bodies to observe the decisions of higher ones. Democratic centralism combines central leadership with local initiative and creative activity with the responsibility of each state body and official for the work entrusted to them."[17]

All socialist constitutions adopted a republican (federal or unitary) form of government. They upheld the idea of separation of church and state.[18] They introduced special chapters, or at least several paragraphs, on foreign policy that were declared to be based on principles of socialist internationalism, friendship, fraternal collaboration, and respect for sovereign equality and national independence.

At the core of all socialist constitutions were provisions on basic citizens' rights, freedoms, and duties, and on the organization of central and local organs of state power. These provisions, which claimed to have a prescriptive character limiting the powers of the institutions created by the constitution, gave the socialist constitutions the force of superior law.

All constitutions of the socialist countries provided an elaborate list of fundamental rights of citizens: the right to work; the right to rest; the right to material security in old age and in cases of illness or loss of working capacity; the right to education; the equality of rights of men and women and all citizens, regardless of nationality or race; freedom of conscience, speech, press, assembly, meetings, street parades, and demonstrations; the right to unite in social organizations; the inviolability of the person and home and the privacy of correspondence; the right of asylum. Socialist jurists always emphasized the breadth of the socialist social and economic rights that were never guaranteed "in the very best and most democratic bourgeois republics." Jurists also stressed the inseparability of citizens' rights and obligations.[19]

The record of human rights violations in socialist states need not be reexamined. It is enough to say that the declarations of the socialist constitutions created no direct rights that could be claimed by individuals against the state. As Robert G. Neumann wrote, they were "merely a promise that the legislature would be guided by certain principles."[20]

Judicial control of the observance of the fundamental constitutional rights in the Soviet bloc seemed to conflict with fundamental assumptions of socialist jurisprudence. Socialist law theorists traditionally argued that "the legislature is conceived to be the supreme expression of the will of the people and beyond the reach of judicial restraint."[21] Legislation, not judicial decisions,

was recognized as the sole source of law in the socialist system.[22] It was assumed that the legislative body was responsible for maintaining the constitutionality of state actions and that constitutional review could not be exercised by extraparliamentary bodies. Constitutional control was usually reserved for internal organs of the legislative bodies, such as the Presidium of the Supreme Soviet of the USSR, the council of state in Poland, the presidential council in Hungary, or the state council in Romania, which exercised many of the powers of the parent body.[23] Supervision over the observance of laws was vested in the procurator-general, who was appointed by and accountable to the supreme legislative body.[24] Traditional socialist legal theory assumed that an individual who believed that his constitutional rights had been violated could file a complaint with the executive branch supervising the office blamed for the violation or with the appropriate office of the procurator. With just a few exceptions, the constitutions of socialist countries did not serve as a basis for litigation, and no one could go to court to sue for a violation of his rights.[25] Socialist theorists claimed that, in the socialist state, the administration cannot be "set against" individuals.[26] In accordance with Trotsky's logic, "the workers could not defend themselves against the workers."[27] The institution of "bourgeois judicial review" was criticized as manipulative, an instrument in the hands of big capital. As Andrei Vyshinsky wrote: "Every sort of statute [in bourgeois countries] is considered as having force until it occurs to some private person or capitalist enterprise to file as petition to have it, or a separate paragraph of it, declared unconstitutional. Naturally this right is broadly used by monopolist cliques of exploiters to obtain a declaration of 'unconstitutionality' as to laws running counter to their interests."[28]

Following Andrei Vyshinsky's argument, other socialist theorists criticized the institution of judicial review. In Poland, Stefan Rozmaryn wrote: "The constitutional control of statutes by extra-parliamentary bodies, particularly judicial and quasi-judicial, is a reactionary institution and because of that, there is no room for it either in socialist State or in a State of people's democracy, which trusts the people's justice and the will of the people."[29]

With the denunciation of the Stalinist dictatorship by Khrushchev and criticism of the deviation of bureaucratic centralism, socialist theorists raised the idea that adopting some modes of social control over the omnipotent administration might be crucial for the regeneration of socialist democracy. Representatives of the developing revisionism argued that the administration is never neutral and often tries to implement some political programs that may depart from the interests of the represented class. The revisionists opted for reconstruction of judicial control over administrative authorities, which had been abolished in the countries of Eastern Europe after World War I.

As a result of this opinion, in the late 1950s the attitude in socialist countries toward judicial control of administrative acts began to change. The right of an individual to challenge the legality of administrative decisions was introduced by statutes in Yugoslavia in 1952, Hungary in 1957, Romania in 1967, and Bulgaria in 1970; these rights were later confirmed by constitutional amendments.[30] Also, the 1977 constitution of the Soviet Union declared that "actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens may be appealed in a court in the manner prescribed by Law."[31] In Czechoslovakia, judicial review was theoretically provided for by the code of civil procedure, but no regulations were mandated that could implement the statute. Neither had there been any significant attempts to introduce judicial review in the German Democratic Republic.[32]

In the countries mentioned above in which the control of the legality of administrative decisions was put into effect, individuals could seek judicial review of questioned decisions in regular courts. This right may be exercised only after all administrative remedies have been exhausted. Moreover, review was limited exclusively to the administrative act's legal basis. In Yugoslavia, the Administrative Disputes Act of 1952 laid down that any final administrative act can be challenged in court and that that court's decision, after determination of any appeal, was binding. Until the promulgation of the 1974 constitution, administrative disputes were heard only by the supreme courts of the socialist republics and the supreme court of Yugoslavia. In accordance with this practice, review of administrative decisions in the republics of Serbia and Vojevodina comes within the jurisdiction of regular district courts of first instance and subsequently to supreme courts. In Bosnia and Herzegovina, disputes are heard by a special administrative court, while in other republics disputes are still handled by the supreme courts of the republics.[33] Some countries, such as Romania and Bulgaria, adopted judicial review of administrative decisions, but with several exceptions. For example, Romanian Law 1/1967 provided a list of matters that could not be submitted for judicial determination. The list included matters of state defense and security, public order, central planning, epidemics, and public calamities. Other exceptions were provided for by special statute.[34] In Bulgaria, exceptions from judicial review related to matters of defense and security, social control, and foreign currency exchange.[35] In contrast, Hungary's 1957[36] law enumerated areas in which judicial review was permissible. Five major spheres of judicial review were set forth: (a) Decisions concerning refusal to remove data from the registers of civil status; (b) matters relating to assignments of apartments; (c) matters on expropriation; (d) matters concerning property taken into custody; and (e) matters concerning taxation.[37] In the Soviet Union the right to

resort to regular courts was generally permitted under the 1977 constitution but was rarely exercised, and areas in which review was possible were not clearly specified.

In the early 1960s socialist countries began to consider introducing judicial control over legislative constitutionality. With the exception of Yugoslavia, however, such developments were unimpressive. Yugoslavia, which first started to experiment with forms of judicial review, established the federal constitutional court and special constitutional courts in 1963.[38] Czechoslovakia also introduced some forms of judicial control over the division of legislative competence between the federal government and federal units. Russian intervention in 1968, however, hampered development of the system, formally declared by the constitution of October 27, 1968, but never implemented.[39]

Some other socialist countries—for example, Romania and Hungary—decided to adopt the principle of political rather than judicial control of constitutionality. This control was exercised either by the central legislative body or by special organs composed of deputies and extraparliamentary experts on constitutional law. Cappelletti states:

> The recent Rumanian Constitution of 1965, although not admitting to judicial control such as that adopted in 1963 Yugoslavia has instituted within the Parliament itself a "Constitutional Committee," elected by Parliament. Up to a maximum of a third of the total number of its members, the Committee may be composed of specialists who are not members of Parliament. The Committee under Article 53 of the Constitution has the task of putting before the "Great National Assembly" reports and opinions on the constitutionality of bills, on its own initiative or at the request of the bodies as indicated by the rules of Parliamentary procedure.

A similar organ was constituted in Hungary in 1984. The council of the constitutional law was expected to cooperate with other state organs to review the constitutionality and legality of all statutes, decrees, and ordinances. Eleven to seventeen members of the council are selected by the national assembly from deputies and "personalities of political life."[40]

In socialist countries, the role of judicial review as an instrument for protection of constitutional rights of individuals was largely symbolic. Practices established in the late 1950s and 1960s, however, undermined the general principle that judicial review was incompatible with Marxist-Leninist doctrine, and such practices paved the way for further-reaching development of judicial review in Poland during the 1980s.

Communist jurisprudence has never recognized the significance of separation of powers or checks and balances. Soviet constitutional theory claimed

that powers should work in accord with recommendations of the Communist Party, the leading and guiding force of socialist society. Article 126 of the 1936 constitution of the USSR declared that the party is the most active and politically conscious "vanguard of the working people." This declaration in the Soviet constitution of 1977 was moved to the beginning of the text and put among the most significant rules (article 6). The party was introduced as the focus of power into all socialist constitutions.[41] William B. Simons commented:

> The new constitutional emphasis on, or realistic recognition of, the party's role has not, however, been to the total exclusion of other social organizations; in several of the communist countries (e.g., Bulgaria, Czechoslovakia, GDR, Hungary, Poland, and Vietnam), mention is made in the constitution of other political parties, and for the first time labor collectives are now listed as participants in the resolution of state affairs (Bulgaria, GDR, and USSR). There is also the entire system of the organizations of associated labor which are provided for throughout the Yugoslav Constitution.[42]

Socialist law theorists traditionally argued that government legislative departments should be recognized as the supreme organs of power. The legislatures, however, were to meet only twice a year for two short sessions, and between sessions their main functions were to be carried out by a nucleus of legislative organs called presidium, council of state, state council, or standing committee.[43] In the socialist constitutions, with the exception of Czechoslovakia and Romania, these organs also took over the collegiate head of state's functions.

In the Czechoslovakian model the presidium between sessions of the federal assembly exercised the functions of a sort of superlegislature.[44] Czechoslovakia maintained a double executive model. At the head of the Czechoslovak Socialist Republic is the president, elected by the federal assembly.[45] The president could not be a deputy or take any other governmental functions. The president appoints and recalls the chairman and the other members of the government of the republic.[46] The president's prerogatives do not limit the functions of the parliament, which is still a supreme power, and the legislature could vote no-confidence in the government by a simple majority of the deputies present.[47] In Romania the constitution of 1952 and 1965 provided for the state council (formerly presidium). Since 1974 the president of the council also carried a title of president of the Romanian Socialist Republic. The president was elected by the national assembly, and his office was vested with the head of state's function.[48]

All socialist constitutions provided for a parliamentary executive. Socialist theorists claimed that the system maintained a functional separation of both

legislative and executive powers, yet the system did permit some fusing of the executive and legislative departments in that heads of governmental departments were allowed to sit in the parliaments. Chris Osakwe wrote,

> Under the functional separation of powers recognized by the constitutions of communist party-states, the executive department constitutes a much weaker arm of the socialist government as compared to the legislative branch. As the name suggests, the primary function of the executive department is to execute the laws of the state and to administer the general policy of the legislature and of the communist party. In order to carry out its functions properly, however, the executive department is authorized to issue rules, regulations, and other executive orders which by their very nature are not a law's strict *sensu* but nevertheless have the force of law. As a source of law, however, the acts of the Executive department are inferior both to the state constitution and to the acts of the legislature.[49]

All socialist constitutions declared that the administration of justice should be vested in courts staffed by independent judges. Some constitutions, following the Soviet model,[50] provided for direct election of judges by citizens or for the option of direct election or election by popular representative bodies.[51] For example, the Polish constitutional model provided for the appointment of judges by the state council.[52] In fact, well-known defects of the democratic mechanisms of the socialist electoral system made the differences of these two models insignificant.

In the 1980s the common core of socialist constitutions began to break apart as a result of the Polish Solidarity upheaval, Soviet reforms of the glasnost era, and anticommunist revolts in East and Central Europe. The stages of this constitutional restructuring warrant careful analysis.

II

THE ERA OF CONSTITUTIONAL TRANSFORMATION

3

POLITICAL AND CONSTITUTIONAL REFORMS OF THE GLASNOST AND POSTGLASNOST PERIODS

The Fall of the Soviet Union

GORBACHEV'S LAW ON CONSTITUTIONAL AMENDMENTS

The process of constitutional change in the socialist system occurred with some routine. The initiative usually stemmed from a politburo or secretary general himself.[1] Typically, the process began after the party leader's initial solidification of power when he tried to eliminate collective party leadership, reduce the number of his rivals, and insert his own people in the highest party bodies. This pattern can be traced through Stalin's triumvirates,[2] Khrushchev's temporary readiness to share power with Anastas Mikoyan, and Leonid Brezhnev's coalition with Aleksey Kosygin.[3] The leader's tendency to purge the Politburo and Central Committee of potential rivals was typical of the preglasnost era. In the late 1980s the full Politburo and a substantial part of the Central Committee consisted of Mikhail Gorbachev's appointees, and Gorbachev's position as primus inter pares was clearly confirmed.

Under such circumstances, the will to amend constitutional law to reflect the new leader's innovations in political philosophy was natural. According to Soviet tradition, constitutional changes were intended to crown the party leader's victory over his rivals. Paradoxically, the process of consolidating power was always accompanied by declarations of the system's democratic evolution. Each new constitution was portrayed as an apex in the long-lasting process of democratization, and Gorbachev's constitutional reform was no exception.

On October 22, 1988, drafts of the Law on Constitutional Amendments were submitted for nationwide discussion. Similar to the periods preceding adoption of the Stalin constitution and the constitution of 1977, the media announced the great involvement of their readers, whose political maturity was assessed highly. *Pravda* reported: "The most distinctive feature of today's

stage in our society's renewal is that millions of Soviet people have emerged from a state of political apathy and are adopting active civic stances. The reform of the political system should be the most important lever for further boosting this activeness of the people and directing it into a single creative channel."[4]

On December 1, 1988, by separate voting in the two chambers, the Supreme Soviet unanimously approved the USSR Law on Elections of the USSR People's Deputies. The Supreme Soviet also approved the USSR Draft Laws on Changes and Amendments to the USSR Constitution by a vote of 1,344 for, 5 against, with 27 abstentions.[5]

Widely heralded changes in the electoral system were vague and had to be examined skeptically. Article 95 of the Law on Constitutional Amendments provided that "elections of people's deputies take place in single-seat and multiseat electoral districts on the basis of universal, equal, and direct suffrage by secret ballot."[6] Amended article 100, which read "Ballot papers can include any number of candidates," provided for multiple nominations.[7]

The reform fostered several observations. First, the extent of implementing multiseat electoral districts was unclear. Elections of people's deputies took place in single-seat electoral districts.[8] One Soviet deputy was elected for each electoral *okrug*.[9] Multiseat electoral districts were most likely tested in elections of local Soviet people's deputies.[10] Second, multiseat elections were not Gorbachev's innovation. Stalin spoke favorably of them to the American journalist Roy Howard in 1936, although the concept failed to materialize in his constitution of 1936.[11] Until 1989, however, only one person ran for each seat in an uncontested election with high electoral participation. Andrei Vyshinsky wrote:

> Under the Stalin Constitution elections to the Supreme Soviet of the USSR and to the Supreme Soviets of Union and Autonomous Republics have shown that the entire population of the land of the Soviets are completely united in spirit, have demonstrated an unprecedented democracy. The days of elections have actually been festive days of the entire people, when the bloc of Party and non-Party Bolsheviks have elected their best people to the Supreme Soviets. The call of the Bolshevik Party to the Soviet People, to all the electors, the vote for candidates of the bloc of the Communists and the non-Party members had exceptional results. In the voting for the candidates to the Supreme Soviet of the USSR, 91,113,153 electors out of 94,138,159 took part—96.8 percent of the entire number of citizens having the right to vote.[12]

Multiseat districts were tested in other socialist countries: In Poland, four to six representatives were elected from one district, and in the GDR, four to ten representatives might be elected from a single list. The 1983 reform of the

Hungarian electoral system also introduced the system of double or multiple nominations, confirming at the same time the primacy of individual districts.[13] The multiseat system and the system of multiple nominations did not, ipso facto, democratize the electoral law of these countries. It is well-known that the breakdown of the democratic electoral systems of the socialist countries resulted from the combination of a few major elements: a defective nomination process, defective secrecy, and the lack of adequate and reliable public control of election results.

The nomination phase, one of the most sensitive and important elements of the process, was seriously affected by the system, which granted the right to nominate candidates to branches and organizations of the Communist Party, trade unions, the Young Communist League, cooperatives, and other public organizations, work collectives, and meetings of servicemen.[14] An average citizen was intimidated rather than encouraged to take part. The new Law on Elections of People's Deputies provided that new representatives would be nominated by labor collectives, social organizations, and servicemen's meetings.[15] *Pravda* noted:

> Now the situation is changing, although this is not happening everywhere or all at once. This is facilitated by the tremendous preparatory work that has preceded the election meetings and conferences. Lists of party committees for bureau candidates have been published in advance so that they could be discussed comprehensively. Use has been made of questionnaires in order to discover people's opinion of the possible candidates. Non-party members have been invited to the conferences which also helps stimulate collective discussion.[16]

This report sounded promising; however, it again resembled Vyshinsky's report on electoral activity under Stalin's constitution:

> Never in a single country did the people manifest such activity in elections as did the Soviet people. Never has any capitalist country known, nor can it know, such a high percentage of those participating in voting as did the USSR. The Soviet election system under [the] Stalin Constitution and the elections of Supreme Soviets have shown the entire world once again that Soviet democracy is the authentic sovereignty of the people of which the best minds of mankind have dreamed.[17]

In reality, reports from the ten-week election campaign that began on January 10, 1989, confirmed reservations drawn from initial examination of the text of the Law on Elections.[18] At least one-third of the people's deputies had to be elected from the CPSU and organizations associated with the party. The rule, which was later dropped, still determined the results of the 1989 elections. The hundred seats allocated to the Soviet Communist Party were filled

by decision of the Politburo and endorsed by the Central Committee.[19] The process of "election" of representatives from the Komsomol, trade unions, labor veterans, and associations of women, all looked similar. Western observers reported from Moscow: "Today's selection of approved Communist Party candidates provided a dramatic reminder of the Kremlin's ability to manipulate what have been billed as the most democratic elections in Soviet history. The party has managed to devise new electoral rules that guarantee it a virtual monopoly of political power behind the trappings of parliamentary democracy."[20]

The new system produced some multicandidate elections for seats not allocated to social organizations. The choice was limited, however. The new, amended laws guaranteed representation to such organizations as stamp collectors, book lovers, and "friends of cinema," but not to independent mass movements such as Memorial, which had been supported by millions of people.[21] Michael Dobbs wrote from Moscow:

> Last week's nominating session of the philatelists' association provided an excellent opportunity to see how the system works in practice. The meeting was called to choose candidates to fill the one seat in Congress reserved for the representative of the Soviet Union's 300,000 stamp-collectors. . . . In the case of candidates who have been endorsed by the party, all obstacles have a miraculous tendency to disappear. Unofficial candidates, by contrast, usually find that they are required to fulfill every exacting detail of the electoral law.[22]

Observers of the initial phase of the election process confirmed that despite attempts to portray the campaign as Western in style, its outcome on March 26, 1989, which gave 80 percent of the seats in the congress to the Communist Party, was easily predictable.

The actual casting of ballots is another element that affected the democratic character of the past socialist election process. Before obtaining a ballot paper, the voter had to identify himself and check his name on a master list of voters. Party propaganda claimed that the voter could cast a valid ballot simply by dropping it in the ballot box; this procedure was recognized as evidence of trust for the party candidates whose names were at the beginning of the list. In this case, even if the list had more candidates than seats allocated to the electoral district, the first candidates on the list were considered to have been voted on. The voting booths were usually located at distant parts of the electoral rooms. To vote secretly, the voter had to walk through the entire room in full view of party representatives.[23] The lack of trust in election practice (electoral rolls and the procedure for their compilation; counting votes in the electoral wards) created an atmosphere of futility and hopelessness that

worked against attempts to vote secretly. In addition, the party's backstage propaganda discretely persuaded voters to remember that people's electoral behavior would be carefully watched by the party and would affect the assessment of individual contributions to the social well-being, a judgment basic to determining the distribution of social goods. Comparing this approach to the Polish system of the mid-1980s (which, nota bene, provided for multiple-seat constituencies and was radically democratized), Janusz Wróbel wrote:

> On September 26, 1985, just prior to the Seym "elections" Minister Miśkiewicz announced, at a meeting of university chancellors, that the participation of Polish academic teachers in the "election" would be the criteria to judge whether or not these academics were in conformance with the constitutional principles of the Polish Peoples Republic. In practice, this meant that refusing to participate in "voluntary elections" could lead to the refusal to grant degrees, academic titles and even loss of job. From the perspective of Polish law, the minister acted criminally since according to Article 189.1 of the Polish Penal Code whoever by force, illegal threat, deceit or exploitation of dependency interferes with the free exercise of election rights is subject to the loss of freedom from six months to five years. Unfortunately, Polish law is treated instrumentally by the ruling group, as a tool serving exclusively to maintain power. The minister is free.[24]

Thus, as far as elective mechanisms were concerned, the reform was not a major sign of the restructuring of the Soviet legal system. The pressures that always accompanied socialist elections were not eliminated, although in 1989 they were significantly reduced. Also, the first session of the convened congress did not bring major surprises. It demonstrated, however, that perestroika was a risky game and that Gorbachev was not clearly in control of the forces he had unleashed.[25] Gorbachev easily won unanimous nomination of the party and was elected president facing only symbolic opposition in the congress, which was still composed of 80 percent Communist Party members.[26] In the voting, Gorbachev's word still prevailed; however, the deputies voted down the government's candidates to Supreme Soviet commissions.[27] Jeff Trimble wrote from Moscow that "when it came to talking, arguing, shouting, criticizing and insulting, this Congress bowed to no one."[28]

One reform of legislative structures was praised by Gorbachev as a shift of power from the party to representative bodies. The reform was also widely heralded as another major element of constitutional restructuring. A *Pravda* editorial declared:

> The draft laws are the legal foundation for the reform. . . . The soviets of people's deputies proved powerless. The work of law enforcement organs weakened dras-

tically. . . . The additions and amendments to the USSR Constitution and the new law on elections are extensive. They are aimed primarily at the democratization of our entire life and the return of power to the soviets of people's deputies, placing them above all other state institutions. It is essentially a case of full power for the people.[29]

In fact, the amended Fundamental Law drew from the tradition of the first constitutions (1918 and 1924) that provided for a double legislative body: the congress and its nucleus, the CEC, itself a bicameral body since 1924. Similarly, the new law vested supreme power in the USSR Congress of People's Deputies.[30] The congress consisted of 2,250 elected deputies who were made up of 750 from the same number of territorial electoral districts with an equal number of voters; 750 from national and territorial electoral districts (thirty-two deputies from each union republic, eleven from each autonomous republic, five from each autonomous region, and one from each autonomous area); and 750 from all-union social organizations. (CPSU, USSR trade unions, and cooperative organizations, each elected a hundred, while Komsomol, women's councils, organizations of war and labor veterans, associations of scientific workers, USSR creative unions, and other legally constituted social organizations, all elected seventy-five apiece.)[31] Reserving a bloc of one-third of the seats for the CPSU and other social organizations was a controversial departure from Western practice and was abandoned once the new congress was formed.[32]

The congress elected its nucleus body, a 450-member, bicameral USSR Supreme Soviet, which was "the standing legislative, administrative and monitoring organ of the USSR state power."[33] The USSR Supreme Soviet had two chambers: the Soviet of the Union and the Soviet of Nationalities, which were numerically equal and possessed equal rights.[34] The chambers were elected at the USSR Congress of People's Deputies by a general vote.[35] The Soviet of the Union was elected from among USSR people's deputies, while the territorial electoral districts and the USSR people's deputies were elected from the social organizations.[36] The Soviet of Nationalities was elected from among the USSR people's deputies, from the national and territorial electoral districts, and from the social organizations in accordance with these norms: eleven deputies from each union republic, four deputies from each autonomous republic, two deputies from each autonomous region, and one deputy from each autonomous area.[37]

Elected by clear party majority, the Supreme Soviet gave Gorbachev less control over the proceedings than was expected. The number of radical deputies, who occupied up to 30 percent of the seats in the congress, was reduced to between 10 to 15 percent in the Supreme Soviet. Nonetheless, Gorbachev

faced unexpectedly strong opposition against his nomination of Politburo member Anatoly Lukyanov as first deputy chairman of the Supreme Soviet and in several votes on national minorities' issues.[38]

Although the Western media's overall reaction was favorable, the laws introduced few new elements into the socialist constitutional framework. The functioning of the double legislative body composed of the huge congress and the smaller, but still bicameral, nucleus organ (the Central Executive Committee, or Supreme Soviet), was well-tested in the 1920s and 1930s. The Soviet practice demonstrated that the congresses of several thousands of delegates were handicapped by their size and were typically more responsive to party rhetoric. The organization of the party congresses proved that they might be prepared for in advance and held in an atmosphere encouraging no symbolic or dissenting debate.

In summary, little changed in Soviet political culture. In fact, using the disguise of a revolutionary reform, Gorbachev tried to reintroduce well-known legislative structures. This strategy was only partially successful. Gorbachev still controlled the congress and the Supreme Soviet, but no longer effortlessly. With all power vested in him, he seemed to be vulnerable and more exposed to criticism from party conservatives and Soviet workers.[39] In 1988, Andrey Sakharov claimed that so far the Soviet people face "perestroika only from above."[40] After one year of experimenting with constitutional restructuring, observers had doubts as to whether perestroika could be controlled from above and feared that its gains might be abrogated.

THE END OF GORBACHEV'S ERA

Among the problems faced by Gorbachev at the end of his presidency, none was more compelling than the future of the USSR. The largest country on earth was disintegrating, and Gorbachev's supporters and opponents had to consider what might remain of the former Soviet empire. Was the USSR descending into chaos? Was there anyone who could—and really wanted to—save it?

The Union Treaty, proposed by Gorbachev at the end of November 1990,[41] was the last desperate move to preserve both the structure of the centralized state and his own position.[42] However, with power slipping from his hands, the future of a centralized union built largely on military and ideological control was doomed. The concept of the union was soon replaced by the idea of a loose, voluntary confederation of independent states. The concept of a commonwealth or confederation, favored by Boris Yeltsin, became a crucial issue in Gorbachev's dialogue with the Kremlin.

In fact, both Gorbachev and Yeltsin seemed unable to fully understand either the ethnic and religious animosities or the economic hardships that were tearing the empire apart. Gorbachev was unable to believe that the Soviet people would be ungrateful for his policies of glasnost and perestroika. He did not realize that, despite all its devastating side effects on the communist regime, his strategy still projected a conservative revolution intended to restore rather than undermine the framework of communist power.[43] On the one hand, Gorbachev was not ready to renounce the Communist Party and a communist future for the disintegrating empire, and, on the other, he did not want to admit that the Kremlin lacked the power to control the centralized state. Yeltsin failed to realize that economic interdependences were too weak to pull the former Soviet republics toward close relations with Moscow. Dimitri K. Simes correctly observed: "Like most people in the Soviet Union, excepting the Baltic states, Yeltsin operated on the assumption that the links among the republics were too deep to allow the death of the union. Also there was the belief that, as Yeltsin and Russia were in the driver's seat in destroying the old union, they would have a determining influence in shaping and running the new confederation of independent republics."[44]

On July 5, 1991, amid disputes on control over enterprises, licensing of foreign trade, collection of customs tariffs, and taxation, Gorbachev's draft Union Treaty was passed by the Russian Supreme Soviet.[45] Negotiations with other republics, however, were far from complete. Step-by-step, the concept of an "open union" surfaced as the working formula. According to Gorbachev's position, the Union Treaty was to be signed by Russia, Kazakhstan, and Uzbekistan and would be "open for signing" by other republics.[46]

However, adoption of the Union Treaty, slated for August 1991, became less of a priority in light of the USSR's intensifying political struggle and the rapidly developing economic crisis. By mid-1991 it was clear that Gorbachev's plan to integrate the Soviet Union into the global economy[47] failed to have its desired effect because of interparty difficulties and politics.[48] Several key leaders, including Yeltsin and the mayors of Moscow and Leningrad, followed Eduard Shevardnadze's example in resigning from the party. Gorbachev found himself locked in a power struggle raging between the progressivists and the Communist Party hard-liners. Both groups attempted to reduce and restrict the Soviet president's power.

To combat the conservatives' increasingly open attack on state policy, Gorbachev decided to separate the higher levels of government from the CPSU apparatus.[49] He also instituted emergency measures to curb international barter and to restrain hard-currency bank transfers. However, the limited

decrees that he issued on deteriorating conditions were virtually ignored by all republics, most notably Russia.[50]

As the time of signing the Union Treaty approached, the hard-liners became more and more concerned that the treaty would grant excessive concessions to the republics.[51] At the beginning of August they apparently tried once more to coerce Gorbachev into their faction, but they did not succeed.[52] On the day before Russia, Kazakhstan, and Uzbekistan were scheduled to sign the treaty, the right-wingers decided to seize power.[53]

From August 19 until August 21, 1991, eight members of the Soviet conservative alliance, led by KGB chief Vladimir Kryuchkov, Defense Minister Dmitri Yazov, and Vice President Gennadi Yanaev, formed what they called the state emergency committee and placed Gorbachev under house arrest. The coup members demanded that he declare a state of emergency and transfer power to Yanaev.[54] On August 21 the coup collapsed, paving the way for a major shake-up within Soviet leadership. The conservative faction, opting for a centralized union, was destroyed. Gorbachev declared that the Soviet Communist Party was an all-pervasive influence blocking progressive reforms. On August 25 he resigned as Communist Party general secretary and ordered the government to seize all party property. In his resignation statement he proclaimed that "the Communist Party Central Committee should take the difficult but honorable decision to dissolve itself."[55] The CPSU ceased to exist.[56]

The coup's failure provided a boost to the separatists in the republics and also wrecked Gorbachev's hopes for a resurrection of the union. Within weeks of the coup's collapse, all republics except for Kazakhstan and Russia had declared independence. The various union republics began to refuse to continue providing budget funds to the central government, which resulted in either the dissolution of many central government departments or their takeover by the Russian government.[57] On September 6 the Soviet Congress of People's Deputies officially recognized the independence of Lithuania, Latvia, and Estonia, terminated the 1922 Union Treaty, and handed over power to an interim authority pending the signing of a new treaty founding a voluntary Union of Sovereign States.[58]

As a result of Russia's decisions to take control of almost all Soviet gold, diamond reserves, oil exports, and disputes over control of the Soviet merchant fleet and navy, the process of forming a new union progressed slowly.[59] In October the chance for an umbrella agreement on economic ties seemed to emerge, but talks were stalled when the three Baltic republics and Georgia, Moldovia, Azerbaijan, and Ukraine decided not to take part.[60] At the end of

November, Gorbachev's attempts to bring the seven republics under the treaty failed entirely. The fate of a centralized union was finally decided by the Ukrainian plebiscite, which by December 1, 1991, predetermined the complete independence of the second-most populated Soviet republic.[61]

On December 8 Russian President Yeltsin, Ukrainian President Leonid Kravchuk, and Byelorussian parliamentary chairman Stanislav Shushkevich took the initiative and signed a joint agreement on the establishment of a "Commonwealth of Independent States."[62] On December 17, Yeltsin and Gorbachev held talks and decided to terminate activities of the union's central organs by the year's end. On December 21 the leaders of eleven republics—Russia, Ukraine, Belarus, Kazakhstan, Uzbekistan, Kyrghyztan, Tajikstan, Turkmenistan, Armenia, Azerbaijan, and Moldavia—held a meeting in Alma-Ata to jointly sign a document establishing the Commonwealth of Independent States. The leaders formally announced that "the Union of Soviet Socialist Republics had ceased to exist" and that the former Soviet seat in the United Nations Security Council would be taken over by Russia.[63]

The status of the new commonwealth was vague from the beginning. Four countries that earlier split with the Soviet Union—Georgia, Lithuania, Latvia, and Estonia—did not join, while the eleven cofounders declared the loose federation to be "only a consultation mechanism."[64] Gorbachev, who was notified about the Soviet presidency's abolition, resigned on December 25, 1991. The USSR's central power rapidly died out, and by the end of 1991 the Soviet Union was no more.

Constitution-Drafting in Former Soviet Republics

RUSSIA FEDERATION

Constitutional Stalemate The disintegration of the Soviet Union brought Russian President Yeltsin face-to-face with the problems for which he used to blame both Gorbachev and party conservatives. In 1992 the Soviet Union was gone and the Communist Party was no longer in charge, but a radical program of reform remained as unclear as before. As Carroll Bogert wrote at the time, "one year later, Russians have a new system, but the same psyche."[65]

Despite its preoccupation with a massive government reorganization, with programs of economic reform, and with rocky relationships with other members of the commonwealth, Russia tried to advance work on a new federal constitution. The constitution-drafting began in mid-1990 but progressed

slowly. In June 1990 the Russian Congress of People's Deputies entrusted the newly elected constitutional commission to prepare a new draft constitution of the Russian federation and to submit it for consideration by the next congress.[66] The commission prepared several drafts that were published in November 1990 and October 1991.

The 1991 draft, presented to the Fifth Congress in the autumn of that year, was taken into consideration, after which the congress instructed the constitutional commission and the Supreme Soviet on "observations and proposals of the people's deputies of the RSFSR to complete the draft constitution of the Russian Federation presented to the Congress and submit it for consideration by the next RSFSR Congress of People's Deputies."[67] In effect, this language simply meant that the congress did not see the possibility of adopting the draft in the foreseeable future. Dmitry Kazutin commented that the draft of the constitution will probably "sink without trace in the quagmire of economic ignorance, ideological idiocy, and elementary stupidity."[68]

Many provisions of the drafts already had been incorporated into the existing constitution in the form of amendments, but the task of adopting an entirely new constitution still was difficult.[69] Two problems proved particularly challenging: (1) the federative structure and (2) the distribution of powers. The drafters' concept of a federal state was criticized by Russian "patriots" and by non-Russian "patriot-separatists."[70]

The patriots claimed that "the draft disrupts the federation's unity, lavishly conferred rights right and left and infringes upon interests of the Russian people."[71] The patriot-separatists objected that the draft favored the rights of the Russian Republic and failed to reckon with the rights of peoples of the autonomous regions. They suggested that Yeltsin should have first set up his own Russian Republic and later entered into treaty-stipulated relations with the Tatar, Yakut, and other republics. As Viktor Sheinis observed, "The two stands are far removed from each other, with advocates trampling on the draft Constitution mapping out the medium line which alone can become the basis of compromise."[72]

Trying to cope with the problem, the Russian Supreme Soviet on March 13, 1992, finally adopted the Federal Treaty on Demarcation of Jurisdiction and Powers between the Federal Organs of State Power of the Russian Federation and the Organs of Powers of the Republics within the Russian Federation.[73] The treaty provided a long list of issues falling within the jurisdiction of the federal organs or over which the federal organs and the organs of state power of the republics would have joint jurisdiction. Similar to the U.S. Constitution, the republics would have exclusive jurisdiction over those mat-

ters not granted to the federal organs by the treaty.[74] The main provisions of the treaty were incorporated into the draft constitution of the Russian Federation.[75]

The second problem was even more controversial. The constitutional drafts put the concept of the separation of powers among the "Fundamentals of the Constitutional System of the Russian Federation" along with such principles as state and people's sovereignty, supremacy of the law, political pluralism, federalism, a market economy, social justice, and respect for human rights and liberties.[76] In fact, in the opinion of many Russian commentators, the incorporation of the drafters' concept of the separation of powers would give a constitutional sanction to the transformation of Russia from a parliamentary democracy into a presidential republic. Viktor Sheinis observed that, "the immense strengthening of executive authority in Russia and its isolation from parliament is an accomplished fact."[77] He asked, "Should the powers which presidential forces have assumed de facto be constitutionally formalized, or is there a need to return to the milder variant of the initial draft, which envisaged the government's subordination to parliament?"[78]

The debate on the new draft constitution illustrated just how far the advocates of parliamentary and presidential systems had drifted apart. Before the text was submitted to the Fifth Congress of People's Deputies, alternative versions of the draft were drawn up by the Communists of Russia group and researchers at the Saratov Institute of Law.[79] The communists charged that the commission's draft constitution made no mention of socialism or communism and that it did not establish a well-balanced relation between the legislature and the executive.[80] In his address to the Congress of People's Deputies, Yeltsin tried to defend the draft and explain his concept of constitutional checks and balances.[81]

Following the instructions of the Fifth Congress, the constitutional commission decided to organize an extensive discussion of the draft. As a result, several more "alternative drafts" surfaced, most of them advising the conclusion of separate treaties between the Russian Federation and its members; the strengthening of parliamentary democracy through granting legislative functions only to one house of the Russian parliament (the state Duma) and supervisory functions to the other (the senate); and the curbing of the president's prerogatives through shifting some of his functions to the federal prime minister, who would be fully responsible for the government's administrative activity.[82] In response, Yeltsin's aides, led by Alexander Maslov, drew up a "Presidential Draft Constitution of Russia" that clearly absorbed a number of features of the American system such as the presidential prerogative to control the executive; the right of the president to veto any law enacted by the

parliament, subject to the overruling vote of a two-thirds parliamentary majority; and the right to be elected in nationwide elections for a six-year term in tandem with a vice president who would automatically become speaker of the parliament's upper chamber.[83]

Amid discussions of whether Yeltsin would decide to submit his draft constitution to a public referendum,[84] the constitutional commission amended its draft and prepared a compromise version between the commission's original draft and the presidential draft. This combined draft was published on March 30, 1992, as the "Constitutional Commission's Draft Text."[85] Acknowledging that the draft still involved a great deal of controversy and might require additional work, the constitutional commission decided to submit the draft for consideration by the Sixth Russian Congress of People's Deputies. President Yeltsin, going against the tendency to curtail his power, again proposed several amendments to the draft.[86] The Sixth Congress discussed the draft at an evening meeting on April 18, 1992. The resolution that was adopted did not, however, differ from the Fifth Congress resolution. The general concept of constitutional reform and the basic provisions of the draft constitutions were approved, but "the Supreme Soviet and the Constitutional Commission were instructed to complete work on the draft, taking into account the proposals and critical comments that have been made, and to submit it to the next Congress of Russian Federation People's Deputies, after first publishing it so the general public can become familiar with it."[87] It was clear to all observers that constitutional reform in Russia was totally stalemated.[88]

Constitutional Convention and the Dissolution of Parliament After months of political wrestling between the executive and legislative branches, attempts by the congress to impeach the president, and Yeltsin's efforts to compromise the legislative leaders in the eyes of the electorate, both parties agreed to submit to a nationwide referendum on April 25, 1993, the key issues of (1) confidence in the president and his socioeconomic policy and (2) early presidential and parliamentary elections.[89] Although Yeltsin won a substantial vote of confidence and Russians voted to support his economic reforms and in favor of new elections for the legislature, the congress did not cease efforts to block the president's attempts to adopt a new constitution.[90]

Realizing the futility of his negotiations with the congress, Yeltsin convened a constitutional assembly composed of seven hundred regional and state officials and interest group leaders to revise the presidential draft constitution.[91] Given ten days to make changes to Yeltsin's draft, the delegates proposed more than five thousand amendments, but they were unable to reach any final agreement.[92] Because of this situation, the task of preparing a new draft was

given to a sixty-member conciliatory commission. The commission submitted its proposal to the convention, which approved the draft by two-thirds majority on July 12, 1993.[93] In response, four days later the congress denounced the convention as illegal and passed a resolution on the Procedure of Adopting the Constitution of the Russian Federation. The resolution provided for two alternative methods of adopting a new constitution, one by the two-thirds vote of the registered deputies of the congress and the other by a referendum. For the referendum to be valid, the qualified majority of two-thirds would have to cast an affirmative vote with a majority of voters participating, including an absolute majority of voters in each component of the federation. As Dwight Semler commented, "These requirements practically ensure that the Congress will remain the only body authorized to adopt a new constitution."[94]

As of September 1, 1993, two draft constitutions existed, one by the constitutional commission, the other by the constitutional convention.[95] Also, at that time it was obvious to all Western observers that constitutional progress would reach a standstill until the political crisis was resolved.

On September 21, 1993, Yeltsin dissolved parliament, thereby creating a diarchy in Russia.[96] In response to this move, parliament, under the leadership of Ruslan Khasbulatov, voted to depose Yeltsin and name Vice President Aleksander Rutskoi as acting president. The result of these actions was a virtual standoff, pitting Yeltsin and his supporters against Khasbulatov and Rutskoi and their supporters. Finally, on October 4, 1993, military forces, loyal to Yeltsin, attacked the parliament building and arrested militant deputies, including Rutskoi and Khasbulatov.[97] Moreover, Yeltsin banned opposition parties and newspapers, disbanded local soviets or councils, and suspended Russia's constitutional court.[98] Thus, the constitution-making process was immediately accelerated, yet the democratic character of this process was undermined, and Yeltsin's autocratic inclinations were immediately boosted.[99]

On November 10, 1993, Yeltsin unveiled a draft of a new constitution. Despite a campaign against the constitution as "a granted" charter rather than a democratically adopted one,[100] the draft was submitted to a nationwide vote on December 12, the same day that Russia held elections for a new legislature.[101] The referendum resulted in 58.4 percent of the voters in favor of adopting the constitution,[102] and, after its approval, the constitution was immediately signed.

Federation Constitution In his speech to the nation introducing the new draft constitution on November 9, 1993, Yeltsin claimed that the document would

be the product of compromise rather than an act "oriented towards settling accounts."[103] The president's victory over the communist parliament, however, had allowed him to disqualify all other competing drafts and submit to the Russian electorate the draft of his preference. The constitution ended the power struggle and clarified the most sensitive issue of the distribution of power between federal authorities and federative components and between federal executive and legislative branches.

First, the constitution eliminated the major differences in the status of the republics and regions (krays, oblasts, and federal-status cities) that stemmed from two 1992 treaties on the delineation of spheres of jurisdiction between the Russian Federation and its components. The treaties vested "all state power" in the republics without giving a comparable "sovereign" status to the regions, which were recognized only and within some limits as "autonomous parties to international and foreign economic relations."[104] The issue, fervently discussed at the constitutional convention of June 1993, almost blocked the progress of the constitutional works and forced Yeltsin to establish a special "conciliatory commission" to produce a compromise between the disputing parties. As Dwight Semler wrote, "the regions want equal 'sovereign' status, while the republics believe they merit special status by reason of their ethnic or national foundations. In addition, the republics resent the fact that the regions are by and large much more prosperous and rich in resources."[105]

The new constitution purged its text of almost all references to the "sovereignty" of Russia's republics and declared that the constitution prevails over the conflicting articles of the Federation Treaty.[106] The statement that "the sovereignty of the Russian Federation extends to the whole of its territory" was upgraded to a fundamental principle of the constitutional system, and the reference, in Yeltsin's previous draft, to the Federation Treaty "as the basis and an integral part of the constitution" was dropped.[107]

Stuart D. Goldman, commenting on the U.S. reaction to the struggle for a new Russian constitution, wrote,

> There is a lively debate in the United States over how to view the struggle between Russian centralizers and decentralizers. For example, Henry Kissinger and Zbigniew Brzezinski, both former National Security Advisors to U.S. Presidents, hold that the main danger from Russia in the future will be the combined tendencies of centralization, nationalism, and imperialism. From this perspective, the United States should hope for a constitution that results in a loose Russian federation, or perhaps better yet, an even looser confederation. Others as diverse as the Russian specialists Richard Pipes and Jerry Hough, however, believe that democratic and market reforms are

unlikely to succeed unless there is a reasonably strong central government pushing reform against entrenched conservative regional political elites and state enterprise managers.[108]

Yeltsin's attempt to "achieve decentralization without disintegration" was immediately put to the test in the North Caucasus republic of Chechenya when it declared independence in 1991.[109] Yeltsin's position that the 1993 constitution provided no legal possibility for seceding from the Russian Federation resulted in the poorly prepared campaign intended to crush the secessionist movement in Chechnya. The clumsy invasion of the republic and the Russian troops' uncoordinated assaults on Chechen villages resulted in humiliating attacks on Yeltsin in the Russian Duma and in the media, which presented him as bombastic and incompetent. Yeltsin's secret decrees,[110] issued without an official declaration of a state of emergency, were challenged in the constitutional court, and his chances for reelection in 1996 were seriously jeopardized.[111] In February 1996, Yeltsin himself admitted that the battles with Chechen rebels had a corrosive effect on his political standing and that his second presidential term depended on ending the war.[112]

In terms of the distribution of power, the constitution can be considered compromise among competing interests. Yeltsin gave up some institutions that in his early drafts were clearly borrowed from the U.S. model. The president is the head of state, but some of his functions in that capacity are transferred to the prime minister. The prime minister carries out the presidential duties in all instances where the president is unable to perform them. The institution of a vice president, who would run for the office together with the president and preside over the federal chamber of parliament, has been abandoned.

The president's position is still powerful. Now the president is elected for four years instead of five, and he receives his mandate directly from the people. The law on the president's election was adopted by the State Duma and the federal council in votes on April 21 and May 4, 1995, and signed by Yeltsin two weeks later.[113] To register, candidates have to collect 1 million signatures, with no more than 7 percent of them coming from any single component of the federation. The law regulates campaign financing. Individuals may donate to a single candidate no more than fifty times the minimum wage (approximately $600), entities with "legal personality" no more than 5,000 times the minimum (around $60,000), and no campaign fund may exceed the wage by more than 250,000 times (around $3,000,000). No donations may be accepted from "legal entities" owned by the state, charitable organizations, the military, and foreigners (including private firms more than

30 percent foreign-owned).[114] Fifty percent of voter turnout is required for the election to be valid. The president is the supreme commander-in-chief of the armed forces, appoints the prime minister with the consent of the state Duma, and nominates candidates for chairman of the central bank, judges of the constitutional and supreme courts, and attorney general. While these nominations require legislative approval, decisions on dismissing the government and on appointing and removing the deputy chairman and federal ministers are left to the discretion of the president, who requires only communication with the prime minister. The president may disagree with the state Duma's decision to an expression of no-confidence in the government, and only in the case of a second vote of no-confidence within three months must he decide whether to dismiss the government or to dissolve the Duma. Within some limitations,[115] the president may also dissolve the legislature if it rejects his nominees for prime minister three times. The Duma's attempts to amend the constitution and to strengthen its role in forming the government were unsuccessful. The proposed amendments aimed at constraining presidential power did not receive a required three-fourths majority.[116]

The president may introduce martial law and a state of emergency, and he may appoint and remove the high command of the armed forces. The president has the right to chair sessions of the government as well as issue decrees and directives. While these acts must not contravene the constitution and federal laws, they need no governmental countersignature. The president, however, has the right to rescind government decrees and directives.[117] To overrule the presidential right to veto the federal law, both chambers of parliament need the support of at least a two-thirds majority of their combined membership.

The procedure for impeaching the president is so complicated that it is unlikely the process could ever be completed. The president's removal requires the initiative of at least one-third of the deputies of the Duma, a ruling by the constitutional court that the established procedure for filing the charge has been observed, a ruling of the supreme court of the Russian Federation that the actions of the president had a character of treason or other grave crime, and finally that the decision of two-thirds of the federation council be adopted no later than three months following the initial charge.[118]

The federal assembly is a bicameral standing parliament. It consists of the federation council and the state Duma. Following both German and early American experiences, the constitution provides that the federation council consists of two representatives from each component of the Russian Federation, with each one appointed by the representative and executive local bodies of state power.[119] The electoral law for the federal council, providing for di-

rect election by the people of representatives, passed by the State Duma on July 27, 1995, was vetoed by President Yeltsin on the basis that the constitution's art. 86.2 provided for the "formation," not the "election," of the federal council.

The federal council shares legislative power with the State Duma. Federal laws adopted by the Duma are sent to the federation council, but when disagreement between the chambers occurs the federation council's position can be overcome by a vote of at least two-thirds of Duma deputies.

The State Duma consists of 450 deputies elected for four years. The constitution, following features of the German Basic Law, provides that the deputies are elected in two tiers, the first determining representatives from single-seat districts, the second selecting them through party lists. Details of the electoral system were provided by a law on Duma elections, early drafts of which were vetoed by Yeltsin because of a dispute over how many seats were to be filled out by the two-tier system. Passed by the federation council on June 15 and signed by the president, the final version of law provides that half the 450 deputies are elected in single-seat constituencies in which candidates prior to the election have to collect signatures of at least one percent of the total number of voters. The other 225 deputies are selected along party lists. To get on the ballot, parties must collect at least 200,000 signatures, including 7 percent of voters signatures from each province, and register their lists with the Central Electoral Commission. After the election the seats are allocated to the parties which met a 5 percent threshold requirement proportional to the amount of votes the party receives. E. Jones and J. H. Brusstar explain that "for instance, a party receiving twenty percent of the party list vote in the election will be allocated 45 seats plus twenty percent of those seats remaining from those parties that failed to break the five percent cutoff."[122]

Judicial review is modeled on the German system, which combines features of abstract and concrete review. The Russian constitutional court, created in July 1991 and chaired by Valerii Zorkin, has been suspended. The new nineteen-member court, which began working again in February 1995, is led by the new chief justice, Vladimir Tumanov. The court has two chambers, one with ten justices and another one with nine.[123] The tenure of the justices varies. Those appointed before the 1993 Constitution was adopted must retire at age of 65; those appointed on the basis of The Law on the Constitutional Court of June 24, 1994[124] must either retire at age of 70 or after 12 years whichever comes first.[125]

The court has been vested with extensive jurisdiction to review constitutionality of federal laws, governmental acts, and international agreements. In fact, after being reactivated, the court announced that it would "carry out a

legal scrutiny of the documents which provided the basis for sending Russian troops to Chechnya."[126] To the disappointment, however, of many critics of Yeltsin's policy toward secessionist republic, on July 30, 1995, the court upheld the presidential and governmental decrees on the deployment of federal forces.[127]

Access to the court is open to a relatively wide range of petitioners. The review may be initiated by the abstract petition of the highest governmental and judicial officials, or by petition of a chamber, or by a deputy of the federal assembly. The court also hears individual complaints and examines "the constitutionality of the law that has been applied or is applicable in the specific case" providing an interpretation of the constitution.[128] The court rules on constitutional conflicts between federal and state authorities, but the constitution dropped its previous right to decide on the constitutionality of political parties and other voluntary organizations.[129] The decisions of the constitutional court are definitive, not subject to appeal or protest; the enactments or provisions deemed unconstitutional "lose their force."[130]

Although judicial review of the constitutionality of laws through "concrete" adversary proceedings is permitted by the constitution, the proceeding is still vague and requires further clarification. The judges of all courts are bound by the constitution and the federal laws, and they must refuse to apply law that they recognize as unconstitutional. It is, however, highly unclear what steps the constitutional court may take. Is the constitutional court able to enforce its interpretation of constitutionality against the interpretation of the regular courts? Will it work as an appellate court? How is this court able to secure the stability of the legal system if regular courts might reach different opinions concerning the constitutionality of laws? Expected new legislation on the constitutional court may help to respond to these questions.

The drafters' intention was to give some rigidity to the new constitution. The initiative to amend or reverse the basic law was reserved for the president, the chambers of parliament (or at least one-fifth of their respective members), the government, and legislative bodies of the components of the Russian Federation. Chapters of the constitution on the foundations of the constitutional system, human and civil rights and freedoms, and constitutional amendments may be revised only by the constitutional assembly convened on a proposal of three-fifths of the combined members of both chambers of parliament. The new constitution may also be adopted by two-thirds of all members of the constitutional assembly or by a simple majority of a nationwide referendum with a turnout of more than half the eligible voters. All other provisions of the constitution can be revised by the votes of the qualified majorities of three-fourths of all members of the federation council and two-

thirds of all members of the state Duma. The decision of the constitutional assembly has to be approved by the legislative bodies of at least two-thirds of the components of the Russian Federation.[131]

In the period before the referendum of December 12, 1993, the draft constitution was furiously attacked by all political groups in opposition to Yeltsin's government. It was commented that even if the constitution were to be approved by the referendum, the new parliament would attempt to amend it and curb the president's power. Despite the strength of the president's opponents in the new parliament, they may face serious problems in attempting to assemble the majorities needed to amend the constitution. On the one hand, the rigidity implanted in the constitution seems to protect its longevity; on the other hand, it is a well-recognized truth that transitory constitutions which are not flexible enough frequently fail. Overly rigid basic laws do not survive long; this fact needed to be seriously considered by the constitution's drafters.

The new Russian constitution is the product of numerous compromises. Russian drafters have been forced to borrow from different constitutional models, wrangle to justify their selections, abandon some of the devices they picked up, and borrow again. Acknowledging this fact in his speech on November 9, 1993, introducing the constitution's final draft, Yeltsin said,

> The text reflects numerous proposals and wishes voiced by the subjects of the federation, political and public associations, research collectives, specialists and citizens. The draft constitution was assessed by experts in our country and abroad. Immense work has been done. Now you, citizens of Russia, must have your final say on it.
> Skeptics say that a majority of people will never read the text of the constitution and will not be able to comprehend this complex matter. This argument is well known to us from the past. Whenever it was found expedient, the people's opinion was used as a screen. When not, then it was said: The people will not understand this, the people are not ready. Indeed, a common individual may find it impossible to understand all the juridical subtleties of the text of the constitution. But as concerns its main principles and ideas, I think our citizens are not only able to sort them out but have in fact long since done so.[132]

Numerous constitutional refinements and changes made up a whole that, although not easy to interpret, is more eclectic than syncretic. The constitution is composed of elements drawn from various sources but is not deprived of logical unity. For example, the constitution still echoes some communist traditions in declarations that the Russian Federation is a social state that protects a worthy life, labor, health, and free development of the individual, family, social services, pensions, minimum wages, etc.[133] All these statements, however, do not have a prescriptive character but are simply descriptions of

policies promoted by the state. In its postcommunist draft, as contrast, the constitution dropped the usual restrictions imposed on private property. It guarantees full protection to all forms of property, including ownership of land and natural resources.[134] In this way, despite the reflections from communist times, the Yeltsin constitution avoided inconsistencies that in other constitutional drafts might block the development of market mechanisms.[135]

As far as the distribution of power is concerned, the drafters initially attempted to duplicate the American system of checks and balances, but they ended up with a model that combines French and American features. The Russian president has a right to veto laws, which the French president lacks, and the right to dissolve parliament, which has not been vested in his American counterpart. In contrast to the American president, the Russian president is not the head of state and government, but his power to control the executive is stronger than that of the French president. The new Russian constitution's establishment of an immensely powerful presidency resulted not only from efforts to boost Yeltsin's prerogative but from attempts to limit parliament's power and governmental independence. The final product seems to reflect an actual balance of powers. While Soviet basic laws were designed to disguise the totalitarian core of the Soviet political system behind a facade of democratic constitutional rhetoric, the Yeltsin constitution has been seen by some commentators as the sort of "autocratic shield" that might be used to protect the values of the young Russian democracy. Whether this constitutional development will enhance a drift toward new authoritarianism or toward democracy depends on geopolitical circumstances, the genuineness of Yeltsin's dedication to democratic mechanisms, and the personality of his successors. At one and the same time, Russia seems to be tired of all forms of dictatorship and uncomfortable dealing with sophisticated democratic mechanisms. Hence, it is highly likely that this constitution may be well-suited to the transitory period from chaotic posttotalitarianism to mature democracy. If this proves true, Yeltsin's basic law may become a prototype of a constitution with many features that might apply to several former Soviet republics.

Fundamental Freedoms and Rights Under the New Constitution[136] The Russian constitution provides that "all are equal before the law and the courts" and guarantees the "equality of human and civil rights and freedoms regardless of . . . race, nationality, language, [or] origin." Moreover, the constitution prohibits "any forms of restriction of citizen's rights on grounds of . . . racial, national, [or] linguistic . . . affiliation."[137] With regard to hate speech, the constitution prohibits "propaganda or agitation exciting social, racial, national or religious hatred [and] propaganda of social, racial, national, religious

or linguistic supremacy."[138] Despite these provisions, problems persist in Russia, especially those relating to the treatment of ethnic minorities.

The Russian government has struggled to separate itself from the anti-Semitic views prevalent in the government during the Soviet era. As a result, the Jewish community in Russia has experienced expanded cultural and religious freedoms. For example, an Israeli embassy was established in Moscow,[139] Jewish cultural groups, children's camps, and youth groups have been started, and some synagogues have been returned[140] to the Jewish community.[141] Tankred Golenpolsky, editor of the *Jewish Herald* in Moscow, stated that "many Jews have received about everything they wanted in the former USSR . . . free travel . . . Jewish schools, Jewish culture, Jewish theater, now they have it. The Jews have received what they have been fighting for."[142]

Anti-Semitism, however, is still a problem in Russia among the general population, even though it is no longer government-sanctioned. Public expression of anti-Semitism has alarmed Russian Jews. In January 1994, after a Jewish emigration office in Russia was bombed, Mikhail Belkin, chairman of the Zionist Forum, stated that the group was "gravely concerned by growing anti-Semitic and nationalist sentiments."[143] Pamyat is the most prominent of the anti-Semitic groups. Moreover, Pamyat's newspaper is only one of many publications that espouse anti-Semitic and fascist ideas.[144] Surprisingly, the leader of Pamyat, Dimity Vasiliyev, issued a statement in January 1994 denouncing the ultranationalist Vladimir Zhirinovsky of the Liberal Democratic Party, which as a result of the December 1993 parliamentary elections held one-seventh of the seats in the lower house. Referring to Zhirinovsky as a "racially impure Nazi and wind-up toy of the government, Vasiliyev maintained "there are no links and can be no links between us and Zhirinovsky."[145]

Commentators also reported that in 1994 discrimination increased against people from the Caucasus and Central Asia. It has been observed that, "with wide public support, law enforcement authorities targeted dark-complexioned people for harassment, arrest, and deportation from urban centers. According to Russian human rights monitors, some were dragged from automobiles in traffic, harassed, extorted, and beaten in broad daylight on the streets."[146]

The problems seem to be less acute as far as other ethnic groups are concerned. Russia is composed of 81 percent ethnic Russians and some 9 percent ethnic minorities. No problems are apparent in the Russian government's treatment of ethnic minorities, and members of ethnic minorities hold high government positions.[147] Ethnic minorities have, however, faced discrimination from the police and from ethnic Russians in Moscow, who, according to one poll, condone the eviction of non-Russians from the city.

Undoubtedly, the ramifications of such discrimination in Russia has an effect on Russians living in the various countries of the former Soviet Union.[148]

The U.S. State Department has stated that "freedom of religion prospered in Russia in 1992."[149] The enacted Russian constitution likewise provides for freedom of religion, which includes "the right to profess any religion . . . or not to profess any, and freely to choose, hold and disseminate religious and other convictions. . . ."[150]

Although the constitution grants religious freedom, obstacles persist to such freedom at the local level. According to the 1990 Soviet Law on Religion, religious groups must have at least ten members and must register with the local ministry of justice to be considered a legal entity and receive benefits.[151] Such benefits include the right to petition for the return of property confiscated during the communist era,[152] access to the media, and the right of such groups to organize their own educational institutions.[153] This registration requirement has allowed local authorities to hinder religious practices indirectly by such tactics as losing applications and delaying the review of applications.[154] Yet despite this registration requirement, the practice of religion in Russia has clearly expanded. Hundreds of new religious groups, as well as congregations inactive during the communist era, have registered with local authorities.[155]

The Russian Orthodox church, after the lifting of religious restrictions, "returned to the mainstream of Russian daily life" with such events as the establishment of Orthodox Christmas as a national holiday. In 1992 the relationship between the Russian Orthodox church and the Russian government was reinforced, which has led to the government imposing limits on non-Orthodox religious organizations. Moreover, local authorities have endorsed the Russian Orthodox church over other religions.[156] This federal and local sanctioning of the Russian Orthodox church has been to the clear detriment of other religions. For instance, it has become difficult for non-Orthodox religions to obtain property taken from them during the communist era.[157]

Finally, even though disparity still exists between the Russian population and the number of religious facilities and clergy, 1992–94 were the years during which more and more churches were opened. Moreover, the ambiance of religion in Russia became more visible with such things as televised religious services, public advertising of religion, street preaching in cities, and press coverage of religious issues.[158]

Within the group of political freedoms, the rights most often commented on were those of assembly and association. To stage a public demonstration, organizers must seek permission of the local authorities ten days before an event, and the authorities must respond within five days.[159] Unauthorized

demonstrations are sometimes permitted; however, police may break up an unauthorized demonstration,[160] or its organizers may be subject to civil or criminal penalties.[161] Nonetheless, the U.S. State Department reported that in 1993 public demonstrations routinely occurred without the government intervening; they were generally peaceful and "commonplace." It also was confirmed that through 1993 and 1994 the authorities routinely issued permits for demonstrations, with the exception of a December 1994 gathering in Moscow during which the police briefly detained the participants for an "unauthorized protest against the bloodshed in Chechnya."[162]

With regard to political parties, the 1991 Soviet law on public organizations guaranteed the right to create political parties, the equality of all such parties, the right to voice political opinions and views, and the right to enter candidates in elections. These organizations were required to register with the ministry of justice; political parties had the added requirements of a 5,000-ruble fee and obtaining 5,000 supporting signatures. The law, however, prohibited organizations that call for "violent change in the constitutional system or groups subordinating the moral order."[163] In 1992 the U.S. State Department noted that three hundred political organizations, representing widely varied opinions, existed without the government intervening.[164]

As far as freedom of movement is concerned, the Russian constitution provides for "the right to travel freely"; one "may freely travel outside the Russian Federation" and "has the right to return without impediment."[165] In practice, however, these provisions have several restrictions. Modifying such freedom of travel, which is easier under the current system than during the communist era, movement into and out of Russia is regulated under the "Law on Entry and Exit,"[166] which went into force on January 1, 1993. The main restrictions under this law relate to whether a potential emigrant knows "state secrets" or has "court-imposed obligations." In the case of "state secrets," however, the restrictions are no longer applied arbitrarily and can be challenged in a court.[167] Thus, although Russia has signed the CSCE provisions for freedom of movement, it appears that the "refusnik problem" still remains. The U.S. government held a list of some fifty people who had not been permitted to emigrate for various reasons, including knowledge of state secrets and "poor relatives" for whom the potential emigrant was purportedly responsible.[168]

The U.S. State Department reported that "citizens were generally free to travel within" Russia, although adults must carry an internal passport when traveling.[169] The *propiska* (pass) system still regulates freedom of internal movement. Under the system, individuals are required to register their place of residence and in many cases to secure permits from authorities in major

cities to establish residence there.[170] Although this system is inconsistent with international law, it nonetheless is still in use. In July 1993 the government issued a new law that entered into force on October 1, 1993. In the law's provisions, instead of requesting permission to change an address, a citizen would be obliged only to notify the authorities of his new place of residence. Still, it was reported that in larger cities, the propiska system was in operation and that it primarily affected people from the Caucasus and Central Asia.[171]

The new Russian constitution provides for freedom of the press[172] and freedom of speech,[173] and it prohibits censorship.[174] The U.S. State Department reported that "freedom of speech and press is widely respected."[175] Moreover, the CSCE asserts that numerous "more or less independent newspapers, journals, and radio stations" operate in major cities.[176] However, restrictions still prevent total freedom of speech and press. Although most newspapers and magazines are no longer subject to government control and the main obstacle facing them is financial,[177] the fact that most printing presses and newspaper offices are government-owned indicates that Russian print media remain subject to some governmental pressure.[178] On several occasions, Russian authorities have attempted to take action against the print media.[179] In 1994 the Russian government placed limits on Russian and foreign press coverage of the war in Czechnya.[180]

Much controversy exists over how much control the Russian parliament should have over the media. In 1992 the parliament, led by Speaker Khasbulatov, attempted to introduce legislation that would set up an oversight committee and allow parliament to essentially take over the pro-reform newspaper *Izvestiya.* The initiative was strongly resisted by President Yeltsin, the public, the liberal press, and democratic legislators. On October 20, 1992, however, parliament voted to assume *Izvestiya*'s control.[181] In addition, Yeltsin on two occasions closed down part of the print media. The first attempt resulted from the August 1991 coup effort, after which Yeltsin temporarily shut down several Communist Party newspapers.[182] The second time, in October 1993, Yeltsin suspended several opposition newspapers and refused to reinstate them, even after criticism from the West and from democrats in Russia. These newspapers represented nationalist, fascist, and communist views; they included *Pravda,* the pro-communist *Sovietskaya Rossiya,* the nationalistic newspaper *Dyen,* and the fascist paper *Russian Order.* Yeltsin also permanently terminated the television show *600 seconds.*[183]

The electronic media as of March 1992 was for the most part government-controlled. Radio and television stations were either government-owned or were broadcasting on government-owned transmitters. Ostankino and Russian Television, both government-owned, were the two major stations that

telecast across Russia and to most member countries of the Commonwealth of Independent States. Yeltsin's opponents have accused these television stations of being biased. Some changes were noted in 1993–94, when privately financed Moscow television stations, such as NTV, TV 6, began to compete with state broadcasting.[184]

With regard to freedom of speech, two anti-Semitic newspapers faced criminal charges for violating the Russian criminal code by "inciting national enmity."[185] Moreover a Russian scientist, Vil Mirazyanov, was arrested and detained for allegedly disclosing state secrets. In September 1993, Mirazyanov published an article disclosing that at his place of employment chemical weapons were being developed and tested in violation of an agreement between the United States and the USSR.[186] Although Mirazyanov was released in November 1993, the charges against him have not been dropped.[187] In the conclusions of their reports, several international organizations commenting on the protection of human rights in Russia raised concern that, with the country in the midst of political instability and economic crisis, respect for certain human rights might fall by the wayside. Freedom House, a politically conservative international organization, publishes "Survey of Freedom," which assesses and ranks the status of political rights and civil liberties in all countries, and considered Russia in 1993 to be "partly free" with a ranking between Thailand and Panama. Explaining this assessment, Freedom House pointed to Russia's "folding down of civil liberties; fragility of the political system due to confrontation among the branches of authority; mounting crime . . . and mass corruption."[188] The U.S. State Department, in its annual report to the U.S. Congress on human rights practices in Russia, while noting the general respect in Russia for rights such as speech, press, assembly and association, religion, and travel, indicated that "in other areas . . . the protection of human rights remained unevenly implemented."[189]

Affirming its commitment to protecting human rights, Russia replaced the Soviet Union in the CSCE on January 6, 1992, and notified the organization's secretariat that the country "retains full responsibility for the commitments enshrined in the Final Act and all documents of the CSCE and would act in conformity with the provisions of those documents." The CSCE staff, however, in a January 1993 report, "Human Rights and Democratization in the Newly Independent States of the Former Soviet Union," noted that while Russia's implementation of CSCE provisions is much better than that of the Soviet Union, "certain shortcomings remain."[190] With growing nationalism, ethnic extremism,[191] and domestic pressure to reconstruct the Russian empire, these "shortcomings" may easily turn into serious violations of human rights, and Russia may again become the site of major ethnic and racial turbulence.[192]

LITHUANIA

Because of its preoccupation with internal political struggles, Russia was quickly outdistanced in constitutional works by smaller republics. First constitutional drafts were produced by Lithuania, Estonia, and Ukraine in 1991, with Belarus, Kirghizstan, and, more recently, Azerbaijan and Kazakhstan following suit.

The creeping disintegration of the Soviet Union strengthened the dissident movement in Lithuania. Following the electoral victory of the Lithuanian Movement for Reconstruction (Sajudis) in March 1990 and a vivid public debate on the legitimacy of the Soviet annexation of the state, the new Lithuanian parliament elected Vytautas Landsbergis as chairman of Sajudis. In that capacity, he issued a declaration of Lithuanian sovereignty on March 11. Several attempts to regain Russian control over Lithuania failed, and the Soviet Union recognized Lithuania's independence on September 6, 1991. A few days later, the United States and several European governments generally agreed with each other in separate statements. Finally, the establishment of the Commonwealth of Independent States on December 8, 1991, and the termination of the Soviet Union's central organs at the end of that year, confirmed the split from Moscow of a newly restored independent state.

The first draft of the constitution of the Republic of Lithuania was dated March 7, 1991, and was discussed at the first Lithuanian constitutional workshop, attended by American participants, in Vilnius on January 21–25, 1992. The workshop was followed by the Lithuanian delegation's visit to Washington, D.C., March 1–6, 1992,[193] during which the second draft dated February 26, 1992, was analyzed. This draft was supplemented in May 1992 by Lithuania's draft court law.[194]

Despite strong encouragement from the West, the process of adopting a new Lithuanian constitution advanced slowly. The establishment of a formal presidency proved to be a major problem. A referendum held on May 23, 1992, failed to support a constitutional amendment to a Provisional Basic Law (March 11, 1990) meant to bind the drafters of a final constitution. In fact, 69.5 percent of those voting were in favor, but only 57.5 percent of eligible voters turned out, thereby denying the referendum the necessary approval of 50 percent of the entire electorate.[195]

The question of presidential powers was put on the ballot in the parliamentary elections of October 25, 1992. The voters approved a new constitution that established presidential institutions, but Sajudis representatives, who helped prepare the draft, were defeated by the communists.[196] As a result of the February 14, 1993, presidential elections, Algirdas Brazauskas, Lithu-

ania's former Communist Party chief, was elected president after receiving 60.03 percent of the popular vote. On March 10, Brazauskas officially appointed Aldolfas Slezevicius as prime minister.

The Lithuanian constitution resulted from solid efforts by its drafters to introduce fundamental principles of Western constitutionalism such as sovereignty of the people, democratic and representative government, division of powers, and judicial review into the Lithuanian system.

Compared with previous drafts, it was a more mature act.[197] The 1992 draft established a parliamentary system and attempted to create checks and balances among the three branches of government. The whole concept of the division of powers, however, was designed halfheartedly. Although the draft provided that "full and absolute power may not be concentrated in any one State institution," it also declared that the Seimas (the legislative organ) "is the supreme and sole organ of state power representing the Lithuanian People."[198]

The 1992 constitution introduced some changes. On the one hand, the drafters dropped explicit references to the theory of the separation of powers, the doctrine of checks and balances, and phrases prohibiting the concentration of power in one organ. On the other hand, they also omitted the provision reserving sole and supreme power to the Seimas. The constitution in its most recent version stated: "In Lithuania, the powers of the State shall be exercised by the Seimas, the President of the Republic, and Government, and the Judiciary."[199] In recognition that the powers should be well-balanced rather than equal, the drafters introduced the provision that "the scope of powers shall be defined by the Constitution."[200] In practice, it means that the legislative and controlling power of parliament is balanced by the dual executive system, with the president, directly elected by the people, sharing executive power with the government headed by the prime minister.

Following the suggestions of Western commentators, the drafters of the final constitutions adjusted the prerogatives of the president.[201] The 1992 draft vested the president with the right to veto legislation, although that veto could be overridden by two-thirds of the Seimas deputies. The president was, however, stripped of the power to dissolve the Seimas; he had only the right to form a provisional government for a period of six months "if the Seimas does not confirm two-thirds of all Ministers and does not approve the program of Government activities within 30 days of the nomination of the Prime Minister, or if the Seimas expresses non-confidence in the Government within six months of its formation."[202]

It also was clear that the early drafts tried to secure stability by adopting

such features of German constitutional institutions as the "constructive vote of no confidence" and "legislative emergency."[203]

Still, the reason for the adoption of these institutions into the Lithuanian draft was vague. The Seimas lacked the right of the German Bundestag to elect, without presidential cooperation, the prime minister by an absolute majority. The president and the prime minister also lacked the power to dissolve the Seimas, which might alleviate a parliamentary impasse. A serious shortcoming of the Lithuanian arrangement was that on expiration of the provisional government's six-month term, the president might not be able to resolve the stalemate.[204]

The new constitution introduced significant changes into presidential powers. Today, the president can turn legislation back to the Seimas for reconsideration, but adoption of a bill questioned by the president requires only another round of voting.[205] The president's issuance of decrees needs the countersignature of the prime minister, or a minister and ministers are exclusively responsible for decrees before the Seimas.[206] On one hand, the president was stripped of the power to appoint a provisional government in times of legislative crises, and, on the other, the new constitution vested in the president the right to dissolve the Seimas if it fails to decide on a new government program within thirty days of the program's presentation, if the Seimas twice in succession disapproves a program within sixty days of its initial presentation, or if the Seimas expresses direct no-confidence in the government.[207] If the president announces pre-term elections to the Seimas, the newly elected members may, within thirty days of the first session and, by a three-fifths vote of all members, announce a pre-term election of the president. If the president chooses to run in a new election, his candidacy is automatically registered.

The president convenes the first session of the Seimas and may call extraordinary sessions. Together with the government, the president implements foreign policy. Diplomatic nominations require governmental countersignature. Additionally, important treaties, such as those involving realignment of state borders, political and long-term economic cooperation with other countries, renunciation of force, stationing of armed forces in foreign states, and participation in international organizations must be submitted to the Seimas for ratification.

The constitution provides that the president be elected for a five-year term on the basis of universal, equal, and direct suffrage by secret ballot. Candidates for the presidency must collect at least 20,000 voter signatures, and the voters must be citizens by birth, at least forty years old, and reside in Lithu-

ania for at least three years preceding the election. A president may serve for only two consecutive terms (ten years), and he may be removed from office by a three-fifths vote of Seimas members for a gross violation of the constitution, a breach of oath, or commitment of a felony.

The government is composed of the prime minister and ministers, with the Seimas having the power to elect or reject the president's proposed candidate for prime minister. The ministers, after nomination by the prime minister, are appointed by the president. Within fifteen days of his appointment, the prime minister should present the ministers and the expose to the Seimas. The Seimas may, additionally, approve or reject the government's program (expose).

The Seimas is authorized to supervise government activities. Seimas members have the constitutional right to submit inquiries to the prime minister, individual ministers, or heads of other state institutions by a request of one-fifth of all representatives. Persons at whom interpellations are directed must respond orally or in writing at a Seimas session. If the Seimas decides the response is unsatisfactory, it may, by majority vote, express no-confidence in that minister. The 1992 constitution provides that the government must resign if the Seimas rejects its program in two consecutive votes, or if the Seimas expresses by a majority vote a lack of confidence in it or in the prime minister.

The 141 members of the Seimas are elected for four-year terms by universal, equal, and direct suffrage by secret ballot. All citizens at least eighteen years of age and not legally declared incapable have the right to vote. Any citizen of Lithuania is eligible for nomination who is at least twenty-five years old on election day and has resided permanently in Lithuania. Members of the national defense service, the alternative service, the police, the internal affairs service, or individuals who have not completed a court-imposed sentence or been declared incapable by the court are ineligible. Nomination to run for office requires the signatures of a thousand citizens. Each national party list must include at least twenty candidates. A voter may be placed on only one national list, but he may also be a candidate in a single-member district. Parties may enter only one coalition.

Candidates are required to make deposits equal to the average monthly wage per candidate. The deposits are forfeited if the candidate or party fails to win seats. The maximum campaign expenditure per candidate is the average of twenty monthly salaries; for parties, the maximum is two hundred monthly salaries.

Elections for the Seimas are held in two tiers. During first-tier balloting, seventy-one members are elected from single-member districts. Several rounds of elections may be held until a candidate receives a majority of votes.

The second tier, which comprises seventy additional members, is based on a proportional "Droop quota" system. The system provides that to be elected, a candidate must reach one quota (quota = votes/seats + 1) or, alternatively, have the highest number of votes when only two candidates remain for one seat. The Droop quota is counted for the constituency's party list, and those candidates who obtain the quota are elected.[208] The votes received by winning candidates above the quota are transferred to other candidates on the list. Electoral districts are set up by the central election committee and may not differ in total voting by more than 25 percent.

The Seimas convenes annually for a spring session (March 10–June 30) and a fall session (September 10–December 23). A majority decision of deputies may extend sessions. Extraordinary sessions may be convened by the president or by a vote of at least one-third of the members. The Seimas recesses from June 30 to September 9 and from December 24 to March 9. Sittings of the Seimas are presided over by the chairperson or by the assistant chairperson, and in the first session following elections the oldest member opens the Seimas.

The Seimas considers and enacts amendments to the constitution; enacts laws, imposes taxes and other obligatory payments, approves and supervises the implementation of the state budget, adopts resolutions for organizing referendums, announces presidential elections, forms state institutions, and appoints and dismisses the chief legislative officers. Besides having the right to approve the candidacies of would-be prime ministers and the right to monitor executive performance, the Seimas has the power to appoint judges to the constitutional and supreme courts, appoint and dismiss the state Controller and the board chairperson of the Bank of Lithuania, and form the central electoral committee. The Seimas additionally announces local government elections, establishes state awards, issues acts of amnesty, imposes direct administrative and martial law, declares states of emergency, announces mobilization, and adopts decisions to use the armed forces.

Standing committees are appointed according to proportional representation by parliamentary groups.[209] Although the constitution does not provide for committees to supervise government activities, committees do consider programs submitted by government and then present their conclusions to the Seimas. Committees may question members of the government, invite them to committee meetings, and initiate proceedings for their dismissal. Additionally, committees consider reports on implementing the state budget.

Parliamentary groups must have a minimum of three members, and new groups must notify the Speaker of the Seimas about the group's establishment, its name, and the names of its members, spokesperson, and deputy

spokespersons. Then, within one week, the speaker must announce the formation of a new group.[210]

The groups receive drafts, necessary documents, and other information, and they participate in establishing the assembly of spokespersons. Groups may suspend consideration of drafts, introduce amendments and modifications, express their opinions in discussions, and present conclusions. Also, groups have the exclusive competence to discuss nominations for prime minister.

Once elected, parliamentary members are exempt from performing national defense duties. Members are immune from criminal prosecution, arrest, or any other form of restriction of personal freedom unless the Seimas consents to such action. Members may not be prosecuted for speeches or for votes in parliament, but they may be held liable for personal insult or slander. Questions of members' ethical conduct are considered by the commission on ethics and procedure.

The minimum threshold for a party to secure representation is 4 percent of the total vote.[211] Lithuanian citizens may freely form political parties, providing that those parties do not contradict the constitution or laws. The Communist Party of Lithuania was the only party banned in the country on August 22, 1991. The reformist faction of the Communist Party became the Democratic Labor Party (DLP), after which the 1992 election held a majority of seventy-three seats in the Seimas. The Sajudis (Lithuanian Movement for Reconstruction) was founded in 1988 and governed Lithuania under the presidency of its chairman, Vytautas Landsbergis, in the early 1990s. The party in 1992 held thirty parliamentary seats. The Lithuanian Christian Democratic Party (CDP) was founded in 1905 and was reestablished in 1989. The CDP gained representation in the Seimas in the 1992 elections and has eighteen seats. The Social Democratic Party (SDP), established in 1986 and once dissolved by the communists, was reestablished in 1989 and is represented by eight deputies. The remaining twelve seats are divided among smaller political groups of which the strongest, the Polish Union, holds four seats.

The right of introducing legislation lies with members of the Seimas, the president, and the government. The citizens of the republic may initiate a piece of legislation with the support of 50,000 eligible voters. Laws are adopted if a majority of members participating in the vote approve. Constitutional laws are adopted if more than half the members approve; they are amended by at least a three-fifths majority of all members.

The list of laws with constitutional status is established by the Seimas after a three-fifths vote of all members. The constitution may be amended when

proposals are submitted to the Seimas by at least one-fourth of its members, or by at least 300,000 voters. With the exception of article 1 of the constitution, which describes the state as an independent democratic republic and may be amended only by three-fourths or more of the participants in a referendum, other amendments are decided on by the Seimas. To decide, the Seimas must vote twice, with at least three months between each vote; each time, the required majority is at least two-thirds of the deputies. A rejected amendment cannot be resubmitted for one year.

Within ten days after receiving an approved law from the Seimas, the president will either sign it or refer it back to the Seimas with reasons for reconsideration. While the president may delay the process of implementing a law, he may not block it entirely. If a law is neither signed by the president nor referred back within ten days, the law will be signed by the Seimas chairperson and will be deemed effective. The Seimas may reconsider and enact laws referred back by the president, or it may accept the amendments and supplements suggested by the president when a majority of its members vote affirmatively. The president must sign the law within three days after it is again endorsed by the Seimas. The president cannot resubmit to the Seimas an adopted law regarding a constitutional amendment. This category of law must be signed within five days, or it will be signed and made effective by the Seimas chairperson.

The completely restructured judicial system, drawn partially from the experience gained during twenty years of Lithuanian independence and partially from the experience of other legal systems, shows the drafters' clear intention to insure an independent judiciary. The constitution also provides for establishment of the constitutional court, although the court's structure and functions were clarified by a separate law of February 3, 1993, according to which the chairman of the supreme court, the chairman of the Seimas, and the president each appoint three justices subject to confirmation by the Seimas. In mid-March 1993 the last three constitutional court justices were approved.[212]

The Lithuanian constitution follows a centralized, or concentrated, model of review, which reserves the right to control decisions on the constitutionality of laws to a single judicial organ. The draft provides that the Lithuanian constitutional court would review presidential decrees, governmental directives and resolutions, and statutes adopted by parliament. When asked to do so by parliament, the court would consider violations of electoral law, the constitutionality of international agreements, and the president's capacity to continue his tenure. The court also would present opinions concerning constitutional compliance of impeachment proceedings.[213]

The drafters of the 1992 Lithuanian constitution received wide praise from Western commentators for their attempts to correct major inconsistencies in earlier drafts. They borrowed less from the German model of "a chancellor's democracy" and copied more from classic parliamentary systems with controlling legislatures, presidents playing roles as senior statesmen, and governments responsible to parliaments. As a result, the system of state governance established by the new constitution seems to be well-balanced and well-suited to Lithuania's political needs and democratic traditions.

Human Rights in Lithuania Of the three Baltic countries, Lithuania currently has perhaps the best track record on human rights. Both Estonia and Latvia, with their substantial numbers of ethnic minorities, face allegations of human rights' violations regarding language and citizenship laws that result from the status of ethnic Russians and Russian-speaking minorities.[214] Lithuania, with its relatively small population, has faced few such problems.[215]

In May 1993, Lithuania became a member of the Council of Europe. After the Lithuanian constitutional court ruled on the compatibility of the European Convention on Human Rights and the Lithuanian constitution, the Seimas ratified the convention with fourth, seventh, and eleventh protocols.[216] However, Lithuania did not ratify protocol 1 because the country's policy of prohibiting foreigners from purchasing land still contradicted the protocol's guaranteed protection of property rights. The Seimas also refused to ratify protocol 6, which abolished capital punishment, the penalty provided for by article 105 of the Lithuanian penal code.[217] No limitations of free speech were placed on broadcasting and publications, except in matters of national security. On the debit side, sporadic allegations have been raised by media affiliated with opposition groups that the progovernment press was permitted greater "access to government officials and official information."[218]

Freedom of peaceful assembly and association were provided for in both the constitution and the 1990 Basic Law, the only qualification being that groups notify local authorities before holding a demonstration. In 1992 through 1994 numbers of public meetings and demonstrations took place in Lithuania, representing such interests as right-wing groups, blue-collar workers, and the Polish ethnic minority. The Moscow-backed Communist Party, however, was banned by the Lithuanian parliament after the party backed the January 1991 military crackdown, the August 1991 coup attempt in Moscow, and other organizations affiliated with the Soviet occupation.[219]

Since the fall of communism no restraints were placed on freedom of religion in Lithuania. Moreover, "no state religion" is sanctioned by the gov-

ernment. The government also has strongly opposed any manifestation of anti-Semitism.[220]

Lithuania citizenship is granted under the citizenship law of December 11, 1991, to those who were born in Lithuania, to citizens of Lithuania before the Soviet occupation in 1940, and to those granted citizenship under the law enacted before the December 1991 legislation.[221] All others may seek naturalization by passing an examination on the Lithuanian language, residing in Lithuania for ten years, having a permanent means of income, and renouncing their former citizenship. In addition, under the Lithuanian-Russian agreement of July 29, 1991, more than 90 percent of ethnic minorities were accorded Lithuanian citizenship as of that date.[222]

Several ethnic minorities have alleged discrimination associated with implementing the language law in Lithuania.[223] Moreover, strained relations have arisen between Lithuanian authorities and the large ethnic Polish community residing in the country's southeastern region. Nonetheless, ethnic minorities can be educated in their native languages; radio and television programs are in various languages; and many publications are in both Russian and Polish.[224] In 1994, five private radio stations were in operation, including one that broadcast in Polish.[225]

The U.S. State Department in its annual report to Congress on human rights positively assessed the situation in Lithuania, stating that "freedom of speech, press, assembly, association, and religion are provided in law and respected in practice."[226]

ESTONIA

Until World War I, despite repeated claims for autonomy, Estonians remained under Russian domination. Independent Estonia was established during the Great Russian Revolution and was officially recognized by the Russian-German Treaty of Brest-Litovsk on March 3, 1918. Also recognized by the major Western states, it joined the League of Nations in 1921.

Estonia adopted three constitutions in the interwar period. The first democratic constitution of June 1918 was followed by the authoritarian constitution of March 1934. The second constitution created a legal framework for the dictatorship of Konstantin Pats. In 1938 a new constitution introduced a presidential system and established a bicameral parliament.

Estonia survived as an independent political entity until 1940 when, under Russian tutelage, the Estonian Soviet Socialist Republic was proclaimed. Estonian territory was invaded by the Germans in July 1941 and remained under

their occupation as part of the *Ostland* until September 1944 when the German army was forced out by the Russian offensive. After some attempts to reestablish Estonia as an independent country, it was reclaimed by the Soviets and remained within the Soviet federation until October 1989, when the Congress of the Estonian Popular Front voted to restore Estonian independence. In November 1989 the Estonian supreme soviet decided to annul its predecessor's 1940 decision to join the Soviet Union. After some attempts to invalidate this declaration as an alleged violation of the Soviet constitution of 1977, Estonia's independence was finally recognized in August 1991 by several European countries and on September 6 by the state council of the Soviet Union.

The unsuccessful referendum in Lithuania left it behind neighboring Estonia in completing the constitutional process. Estonia declared its independence in March 1990 and fully separated from Moscow on August 20, 1990, after the coup attempt in Russia.[227] Shortly afterward, a commission was formed to draft a new constitution. Called the constituent assembly, it was composed of thirty members of the supreme council (the former supreme soviet of Estonia) and thirty members from the congress of Estonia (an interim independent quasi-parliament).[228] The assembly considered four drafts and discussed the possibility of using Estonia's 1938 constitution as a model for a new basic law.[229] As the former Soviet Union's other republics, the drafters' attention focused on two major problems: the limits of presidential power and the method of electing the president. After the initial rejection of two drafts that clearly favored the presidential system, the assembly focused on a proposal of the Estonian National Independence Party (ENIP) to reactivate the 1938 constitution; it also keyed on two new drafts, one prepared by the former Estonian minister of justice, Juri Raidla, and the other by the assembly's drafting committee led by Juri Adams.[230] The 1938 constitution generated some attention as it provided for parliamentary election of the president, the model favored by the assembly. Under pressure from that part of the population which favored election of the president directly by the people, the assembly compromised. It decided that the first president would be popularly elected, but his followers would be elected by parliament.[231] The debate on the model of the presidential election showed that the assembly clearly favored a parliamentary system. In the end, all drafts proposing strong presidential power, including the draft based on the 1938 constitution, were rejected.[232] The assembly decided to put before the electorate a modified draft by Juri Adams, which envisaged Estonia as a parliamentary republic.

A month before the draft constitution was submitted to the referendum, it was strongly attacked by a group known as Restitution, led by Endel Lipp-

maa, Johannes Kass, and Juri Estam, all of whom favored an adoption of the 1938 constitution. For a short time it looked as if the Estonian constitution might share the fate of the Lithuanian draft. Nonetheless, the draft was adopted after a national referendum on June 28, 1992. About two-thirds of eligible voters cast ballots, with more than 91 percent accepting the draft.[233] The adopted constitution, the first one accepted by a former Soviet republic, took effect on July 4, 1992.[234]

The current constitutional rules on presidential elections are complicated. They provide for three possible rounds of elections in the Riigikogu (a newly created 101-member legislative assembly) and two rounds in the electoral assembly. Candidates for president can be nominated by at least one-fifth of the deputies. The candidates must be at least forty years old and Estonian citizens by birth. To be elected in one of the first three rounds, a candidate must receive two-thirds of the votes of all deputies. If the president is not elected in the first round, new candidates may be nominated for the second. In the third round, only the two leading candidates remain. If neither receives two-thirds of the total vote, a fourth round is held within one month by the electoral assembly, which consists of members of the Riigikogu and representatives of local governments. The two leading candidates taking part in the Riigikogu elections can be joined at this stage by other candidates nominated by at least twenty-one assembly members. To be elected in the fourth round, a candidate requires support from a majority of electoral assembly members. If a president is not elected in the fourth round, then the fifth round, held the same day, will elect one with a plurality of votes.[235]

The presidential prerogatives remained a hot issue during the legislative and presidential elections on September 20, 1992. Direct presidential elections did not result in a majority of votes for any of the four participating candidates. As a result, the next round of elections was held in the Riigikogu. Two candidates ran in the second round: Arnold Ruutel, leader of the Secure Home Alliance and chairman of the former parliament (the supreme council), and Lennart Meri, a former minister of foreign affairs who was supported by Isamaa (Pro Patria or Fatherland), the leading party. Meri was elected by 59 votes to 31. In October the president nominated a coalition government led by Prime Minister Mart Laar.

The president, as head of state, has functions typical of counterparts in Western European parliamentary republics—notably, the role of arbiter in interparty disputes and a representative of the state in international relations. Within limits, the president performs legislative functions. He has the right to initiate constitutional amendments and issue decrees. Presidential decrees cannot, however, affect the constitution or any laws implementing it.[236] De-

crees may be issued only if the Riigikogu cannot convene, and they must be cosigned by the chairman of the Riigikogu and the prime minister and submitted to the parliament for approval or rejection in a timely manner. The president may delay the promulgation of laws for fourteen days if he requests reconsideration of a statute or asks the state court to review its constitutionality. If the Riigikogu reaffirms a law returned for reconsideration, or if the state court rules that it is constitutional, the president must promulgate the law.[234]

The president is constitutionally liable and can be held criminally liable on a motion of the ombudsmen and on the decision of a majority of Riigikogu members.[238] In turn, the ombudsmen can be charged with a legal offense on the proposal of the president and with the Riigikogu's consent. The ombudsman is an independent official, appointed for seven years by the Riigikogu, on the president's recommendation. Ombudsmen investigate violations of constitutional rights and liberties and oversee the constitutionality and legality of legislative and executive actions.

Supreme legislative power is vested in the Riigikogu, a 101-member unicameral parliament.[239] The law on elections provides for two tiers based on a proportional system.[240] The lower tier comprises twelve multimember districts with seats allocated pursuant to the Hare formula.[241] To win a seat in parliament, it is necessary to get a "one" quota (quota = votes/seats). The upper tier is composed of one nationwide, multimember district with seats allocated pursuant to the d'Hondt system, which is the highest average system favoring large parties.[242] The threshold for parties to introduce representatives was set at 5 percent.

All citizens eighteen years of age and older, and who are not disqualified by a court decision, have the right to vote. Citizens who are twenty-one years old and have the right to vote are eligible to run for the Riigikogu. Parties may present only a single list of candidates. Candidates presented on the district lists for the first tier must be included on the national list. A party may not be required to meet the national list's 5 percent threshold if three of its candidates gain seats in the territorial districts.[243] A deputy is not bound by constituent instructions, and the deputy cannot hold any other governmental positions.

Regulations governing the Riigikogu are the Law on the Riigikogu Standing Orders and the Law on Riigikogu Procedure. The Riigikogu adopts laws, elects the president, decides on the conducting of referenda, ratifies and rejects foreign treaties, authorizes the candidate for prime minister to form a government, and makes major governmental appointments. Additionally, it has the power to appoint (on the proposal of the president) the chairman of the national court.

Members of the Riigikogu may form factions consisting of at least six members, but each member may belong to only one such faction. Member affiliations are decided by the faction. A member may resign from a faction by application or by the faction's decision. Each faction is registered in the board of the Riigikogu, and each elects its own chairmen and vice chairmen.[244]

Members of the Riigikogu are immune from criminal prosecutions unless the prosecution is proposed by the ombudsman and is approved by a majority of members. The authority of a member terminates with a criminal conviction. Members are not obliged to serve in the national defense forces.[245]

Parliament is in session from the second Monday of January through the third Thursday of June, and from the second Monday of September through the third Thursday of December. Extraordinary sessions of parliament may be called on the command of the president of the republic, the government, or at least one-fifth of the members of parliament. Initiation of law may be proposed by members of the Riigikogu, its factions, or the government of the republic.[246] The president or a group of one-fifth of the deputies may propose constitutional amendments. Majority approval by members of parliament on two separate votes is required to change the constitution. Amendments also may be made through referenda, but three-fifths of the parliament members must first approve the initiative. A debate is declared open for discussing any item on the agenda. After the debate ends, each faction may take the floor for three-minute summaries. The final wording of a bill, if a faction so demands, must be distributed to all Riigikogu members. The first reading of a draft law is not followed by a vote if the committee responsible for the draft consents and if other factions have not submitted proposals to reject the bill. After a second reading, amendments may be presented by a faction or by a standing committee. A proposal to subject a draft to a third reading may be made by the committee that drafted it, a faction, or a member of the Riigikogu. During the third reading, only an authorized representative of each faction or the standing committee itself may make comments.

The adoption of more important laws listed in the constitution requires a majority vote of all deputies. These laws concern citizenship; elections; procedure in the Riigikogu; the remuneration of the president and the deputies; the government; court proceedings against the president and the members of government; cultural autonomy for minorities; the state budget and domestic loans; state financial obligations; states of emergency; and peacetime and wartime national defense. All other legal acts of the Riigikogu require a simple majority of affirmative votes.

The ombudsman is charged with monitoring whether legal acts of the Riigikogu accord with the constitution. If the ombudsman decides the reg-

ulations or laws completely or partially contradict the constitution, he or she will propose that the Riigikogu make the law or regulation in agreement with the boundaries of constitutionality within twenty days. If the Riigikogu does not take such action, the Ombudsman will propose to the national Court that the regulation or law be declared null and void.[247]

The Riigikogu has the authority to adopt the state budget and approve the report on its implementation. A budget is approved for all state incomes and expenditures each year, following a government-submitted draft budget. If the parliament fails to approve a budget two months from the start of the budget year, the president may call special elections.

Also, if the parliament fails to select a prime minister, the president may dissolve it and call new elections. The parliament will be dissolved after four failed attempts to form a government. The president must declare early elections if a referendum vote initiated by the parliament fails.

The parliament by a majority ballot may vote the government down in a no-confidence action.[248] The vote may result through a written motion by one-fifth of the members. In response to a no-confidence vote, the president at the government's suggestion has the option of dissolving parliament and holding a new election.

Throughout 1993 the relationship deteriorated between the Estonian president, parliament, and coalition government. As a result, on May 5, 1993, the Riigikogu passed a law regulating relations between the president and parliament. Under the new law, the national court is empowered to use court procedures to supervise the president and parliament. For example, if an issue is whether the president should sign a law, and the court finds that the law is contrary to the constitution, the president must abide by the court's decision. In early 1994 the crisis became more serious when President Meri attempted to block governmental reshuffling recommended by the prime minister. During several Riigikogu sessions, debate occurred on whether constitutional provisions and presidential powers would require adoption of a new law, "On Order of the Work of the President." The tensions resulted in the early dissolution of the first Riigikogu and the new election held on March 5, 1995.[249] The election brought victory to the left-of-center alliance of two parties, the Coalition Party led by former Prime Minister Tiit Vahi and the Rural Union by Arnold Ruutel. The coalition got 32 percent of the vote and 41 seats in the 101-seat Riigikogu.[250]

The court system is composed of rural and city courts, district courts, and the national court. The constitution provides that all courts should refrain from applying laws or legal measures that conflict with the constitution, a provision that gives all courts the right to declare acts unconstitutional. The

challenged act is automatically appealed to the constitutional review chamber of the national court, which is composed of seventeen justices, five of whom sit on the constitutional review chamber. If the chamber agrees with the lower court's decision, the challenged act is recognized as "null and void."[251]

Human Rights Record For the most part the human rights situation in Estonia accords with international standards. The most contentious issue in the area of human rights, however, has been the status of ethnic Russians and the Russian-speaking minority[252] in light of the Law on Citizenship, which was reenacted in February 1992.

Currently, Russians comprise some 40 percent of the Estonian population—475,000 of a total population of 1.5 million.[253] The majority of those Russians moved to Estonia during the Soviet occupation. Since the Soviet invasion and occupation, relations between the Estonians and Russians have been strained, a problem aggravated by the Russian influx during those years.[254]

The Law on Citizenship, based on a law originally enacted in 1938, before the Soviet invasion, and reinstated on February 28, 1992, lists requirements for attaining Estonian citizenship. Basically, the reinstating of this law denied automatic citizenship as well as voting rights to the Russian-speaking minority. According to the law, Estonia citizenship was granted only to those who were citizens before June 16, 1940, as well as their direct descendants and to those who "provide particularly valuable service to the national defense or society of the Republic of Estonia or who are widely known for their talents, knowledge or work."[255]

The Law on Citizenship does, however, provide relatively liberal requirements for naturalizing those who moved to Estonia after 1940. To become naturalized citizens, the following criteria were required: (1) residency in Estonia for two years, as of March 30, 1991, the day that Estonia declared its independence, (2) the ability to speak the Estonian language, and (3) a pledge of loyalty to Estonia. Additionally, the law prohibited naturalizing of (1) foreign military personnel, (2) USSR security and intelligence personnel, (3) those without a legal means for obtaining an income, and (4) criminals.[256]

The Law on Citizenship's language requirement has caused much consternation within the Russian-speaking community. No formal levels of required proficiency have been specified for naturalization. Rumors have indicated that anyone seeking to naturalize has to know at least 1,500 words in Estonian. Such a proposal is especially troubling to members of the Russian-speaking minority who profess to have no feasible method for learning Estonian or to the older population who have spoken only Russian during their entire lives.

One ramification of the reinstated citizenship law was denial to the Russian-speaking minority of the chance to vote in the parliamentary and presidential elections of September 1992. In addition to the requirements for naturalization, ethnic minorities seeking citizenship had to wait an additional year, and it was during this year that elections were held.[257] Thus, those denied the vote in 1992 were to be permitted to vote in the parliamentary elections of 1995.[258] The CSCE delegation noted that even though Russians were denied the opportunity to vote, they exhibited no violence or hostility and made no attempts to impede the election by staging demonstrations.[259] Some Russians, the CSCE delegation noted, were embittered by "the denial of citizenship and disenfranchisement."[260] On the other hand, the majority of Russians interviewed, according to the CSCE delegation, seemed more concerned with long-term ramifications of being denied citizenship and the implications it could have on their social and economic rights. Russians fear that along with the denial of citizenship, their economic rights will be curtailed, leading them to worry about employment, rising prices, and land ownership.[261] A Russian citizenship movement has taken place in Estonia under which some 14,000 Russians have signed onto the Russian citizenship law and thereby invoked paragraph five of that law, which requires Russia to protect its citizens living abroad.[262]

The "Russian question" is at the forefront of Estonia's problems, an issue that must be resolved by the newly elected parliament. Perhaps the CSCE explained the current situation best, stating, "Estonia cannot create a modern, democratic country, achieve political stability and develop good, cooperative relations with neighboring Russia without addressing the Russian question. Actual resolution of the problem might take a long time, but there is much that Estonia can do in the short term to facilitate integration of its Russian minority."[263] On the Estonians' part, the government must take further steps to assure the Russian minority of economic and political rights, provide programs to teach Estonian to nonspeakers, and generally work to further the minority's integration. The CSCE noted that "while Estonia must try to integrate its Russian minority, the Russians must come to grips with the changed situation and make some fundamental decisions."[264] Primarily, they need to decide whether they indeed want to become full-fledged Estonian citizens.

In regard to speech and a free press, the U.S. State Department noted in 1993 that while "Estonians legally enjoy wide and constitutionally guaranteed freedom of speech," the Estonian media are "relatively restrained in practice."[265] Nonetheless, the media do, in fact speak out against the government, with no indication that such expressions are subject to penalties or even threats of punishment. Furthermore, even though the state still controls newsprint, printing facilities, and distribution, no evidence indicates that it has

wielded its authority to put pressure on the media.[266] The growing activity of private media was admitted in 1995 by the U.S. State Department, which reported that "state broadcast media, including one nationwide television channel, continue to receive large subsidies, but there are several independent television and radio stations."[267] On overall evaluation, the State Department concluded that not only does the law in Estonia provide for freedom of assembly, freedom of conscience and exercise of religion, and free movement inside and outside the country, but these freedoms are, in fact, respected.[268]

UKRAINE

After centuries of colonial anonymity [Adrian Karatnycky has written], Ukraine is finally making its mark on world affairs. Although relegated to secondary status by the West, Ukraine is rapidly emerging as a forceful and important actor in defining the contours of post-Soviet Europe. Russia and its President, Boris Yeltsin, may have taken the lead in defeating the August 1991 putsch and the Soviet Communist Party. But it was Ukraine, led by President Leonid Kravchuk, that ultimately provoked the unraveling of the Soviet empire; Ukraine's refusal to sign Mikhail Gorbachev's union treaty precipitated the collapse of the USSR and the creation of the new Commonwealth of Independent States.[269]

The drafting of a new constitution in Ukraine began shortly after the December 1, 1991, referendum, in which 90 percent of the population voted for independence. The working group of parliament's constitutional commission, headed by Leonid Yuzkov, prepared two drafts in January and June 1992. The second draft was submitted to the evaluation of a CEELI group of experts, and the CEELI report was forwarded to Kiev on July 14, 1992.[270] In the spring of 1993 the constitutional commission prepared a revised draft of a new basic law, which, after much debate, was returned to the working group for further changes.[271] The commission meeting on May 3, 1993, was again inconclusive as the draft generated a great deal of criticism, primarily from the commission chairman, Leonid Kravchuk.[272] On May 17, 1993, the commission met again and decided that the draft constitution would be submitted to parliament by mid-June. After much debate, the commission resolved all issues, including those of cultural identity, forms of state management, and Ukraine's territorial organization; the commission then directed the working group to prepare a final version in accord with discussions.[273]

Ukraine's constitution-making process seemed on the right track again. At an international symposium on Ukraine's draft constitution, which opened June 20, 1993, President Kravchuk praised the new draft, stating that it is "in

accordance with the interests of the individual, democracy and the strengthening of statehood."[274] In the summer of 1993, however, adoption of the constitution was further delayed as seven Ukrainian political parties demanded that a constitutional assembly be convened and parliament resolved that issues of a state system and form of state government would be put to a referendum.[275]

The draft,[276] which contains 258 articles, exceeds the length of constitutional texts in other former Soviet republics by one-third. It provides specific regulations, among others, for the national anthem (article 253), the state flag (252), professional and amateur arts (93), ecological safety (79–83), or protection of the family (84–88). The drafters intended to give the constitution some rigidity by disallowing amendments directed against independence and territorial integrity, by additions restricting forms of property and human rights, and by providing for an all-Ukrainian referendum on amendments proposed by no fewer than 2 million electors.[277] The detailed character of the draft, on the other hand, seems to encourage frequent amendments, which may diminish public respect for the constitution. Commentators observed that the draft seems to prescribe both too much and too little, and they suggested that minor problems should be subject to statutory control.[278]

The draft's introductory chapter on general principles of the constitutional system portrays Ukraine as "a democratic, social state which adheres [its] activity with the rule of law."[279] It provides a solid framework for a representative government, although it also recognizes the importance of direct democracy. Article 115 of the draft states that "the people exercise state power through nationwide voting (referenda), elections and through the system of state bodies."[280] Article 116 explains, *expresis verbis,* that "an all-Ukrainian referendum is the constitutional means of direct approval by the people of Ukraine of laws and other state decisions."

It must be observed with satisfaction that the drafters placed the concept of limited government among the essential foundations of democratic government.[281] The draft provides that citizens can exercise their rights in the sphere "which is not prohibited by law" but that state bodies operate only within an area determined by law, meaning they must have a clear legal basis for their actions.[282]

Departing from the socialist tradition, the draft constitution clearly recognizes the principle of the division of powers. Legislative power in Ukraine is vested in the national assembly, whose bicameral structure can hardly be explained in light of either Ukraine as a unitarian state or the Ukrainian constitutional tradition. Bicameralism, in fact, might undermine the effectiveness of the legislative system. Executive power is vested in the president, who

is both head of state and head of government. The drafters clearly intended to incorporate some elements of the American presidential system into the constitution. Elected directly by the people, the president of Ukraine "carries out the general leadership of the Cabinet of Ministers of Ukraine and directs its executive activities."[283] The president may issue decrees and orders that require no ministerial countersignatures. He is commander-in-chief of the armed forces, and he has a suspensive (deferring) veto, which can be overridden by two-thirds of the total number of members of each house, as determined by the constitution. The prime minister is only a deputy to the president and is "subordinated and accountable" to him. In addition, the president may annul acts of ministers and heads of central and local bodies of executive power. The president submits candidates for the post of prime minister to the national assembly, and the president also has the authority to propose the prime minister's dismissal.

The executive and the legislature are separate and independent. To terminate the president's tenure before his five-year term expires, the assembly must impeach the president. As opposed to the American system, in Ukraine the people may be called to decide directly on termination of the president's powers or the assembly's dissolution. The assembly must decide by at least two-thirds of each house to hold a referendum on terminating the president's powers. The president cannot dissolve the national assembly, except in situations where the assembly has initiated an all-Ukrainian referendum on the termination of presidential powers and when, in the result of the vote, the people have expressed their confidence in him.[284]

The draft still has some ambiguities. For one, the prime minister's role is not well-defined. This post, being a concession toward the parliamentary system, seems halfheartedly crafted. Also, provisions for presidential elections are vague. The draft seems to provide for a majority vote to elect a president; it does not explain, however, what happens if a majority of the electorate fails to vote or the vote is split among candidates. Commentators have suggested that to lessen the danger of rule by a person acceptable only to a small majority, Ukraine might wish to consider amending the draft constitution to provide for runoff elections.[285]

The judiciary consists of the common courts, economic courts, and the constitutional court.[286] The system still shows some features traditionally attributed to a socialist model. The existence of special economic courts, which in a socialist state handled disputes between state enterprises, state farms, and cooperatives, and operated more like courts of arbitration than regular courts, confirms that the drafters still anticipate state administration of vast public properties.[287] The draft, however, does not provide for special

administrative courts. The right to hear cases regarding illegal actions of state administrators and officials is vested in regular courts (courts of general jurisdiction).[288] This system, introduced in most socialist countries in the 1950s, has never worked properly. The judges of regular courts, well-trained to follow the codes, hardly can offer a policy-minded analysis of administrative decisions. In some former socialist countries, notably Poland, judicial review of administrative acts has been taken over by a network of special administrative courts.

The constitutional court is fashioned on the German model of mixed (abstract and concrete) constitutional review.[289] Articles 243 and 244 of the draft grant to the court abstract judicial review and the power to review the compatibility of laws, presidential decrees, and international agreements, as well as acts and actions of the central and local legislative and executive bodies. The court institutes the review when asked to do so by the highest state officials and at least one-fifth of the members of parliament.[290] Review by the constitutional court may also take a "concrete" form and be initiated in connection with regular judicial proceedings.[291] Article 217 provides that if "in the course of a judicial proceeding the court determines that it must apply a law or its interpretation that is inconsistent with the Constitution, then the court shall adjourn the proceeding and shall petition the Constitutional Court of Ukraine to declare the law or its interpretation unconstitutional." The constitutional court is also an advisory body and may be asked "to give consultations."[292]

Similar to the German model, the draft grants individuals the right to file a complaint. Since complaints comprise some 95 percent of the cases of the German Federal Constitutional Court, Ukrainian drafters tried to limit them to those that have "been considered and decided by a general court" and which the ombudsman supported.[293]

In 1994 the issue of constitutional reform was further sidelined by parliamentary and presidential elections. Until the beginning of 1995, despite many election rounds, some seats in the 450-seat Verkhovna Rada went unfilled. Presidential elections held in June and July resulted in the surprising defeat of Leonid Kravchuk and the victory of Leonid Kuchma, the former prime minister.[294] Although Kuchma as the new president claimed to be fully dedicated to constitutional reform, it became clear that revival of the constitutional process would require the establishment of a new constitutional commission. The commission held its first meeting on November 28, 1994, at which it disputed proposals to reduce parliament to a size of 250 to 300 members. Although the commission focused on executive-legislative relations, it did not

produce a new constitutional draft that could be submitted either to parliament or a nationwide referendum.[295]

In 1995 the process of constitution-making was disrupted by the Crimean crisis, during which the Ukrainian parliament canceled the 1992 Crimean constitution and abolished that autonomous republic's office of president. Growing tensions between parliament and government further delayed the process, which did not advance until the beginning of 1996.[296]

Human Rights Situation[297] According to the 1993 U.S. State Department annual report to Congress, Ukraine "made significant progress in the area of human rights during 1992" but still experienced problems in the treatment of ethnic and national minorities, religious affairs, and freedom of expression.[298] The State Department noted especially acute problems existed with ethnic tensions in the Crimea, anti-Semitism, and restraints on freedom of the press and the prison system,[299] which is still managed under Soviet standards.[300]

The CSCE, in which Ukraine became a member on January 30, 1992, also reported that Ukraine "has made considerable progress in its pledge to respect CSCE and other international human rights commitments," but there were "exceptions to the improved human rights scene."[301] The CSCE praised Ukraine for movement in the right direction. The 1993 report emphasized that, in July 1990, Ukraine adopted the Declaration of State Sovereignty of Ukraine, which "included assurances on the protection of individual rights and freedom." Ukraine also became a party to the Optional Protocol of the International Covenant on Civil and Political Rights in December 1990, and it passed the Ukrainian Citizenship Law on October 8, 1991, which conferred citizenship on virtually everyone residing in the country.[302] In addition, since the state sovereignty declaration's passage in July 1990, parliament has approved laws to protect civil, political, economic, and social rights.[303] Nonetheless, the CSCE stated that while Ukraine has the "legislative underpinnings for the protection of human rights and fundamental freedom," as far as actual implementation of this legislation, "Ukraine has made limited progress."[304]

Ukraine primarily comprises two ethnic groups, 37.4 million Ukrainian (73 percent) and 11.3 Russians (22 percent); Jews, Poles, and Byelorussians make up some smaller ethnic groups.[305] In November 1991, Ukraine enacted a law on the protection of national minorities. Despite the fact that Ukraine has been spared the intense ethnic conflict occurring throughout the former Soviet republics and former Soviet bloc countries, some ethnic tension is present, especially between Russians and Ukrainians in the Crimea. The reports emphasized that Ukraine has avoided much ethnic strife through its

"constructive attitude towards minorities," meaning that Ukraine has emphasized "citizenship[306] and not ethnicity as a basis of identity" and has used "an inclusive, rather than exclusive approach towards minorities."[307]

The Crimea, which has been the hot spot for ethnic conflict in Ukraine, is composed of 1.5 million Russians, 800,000 Ukrainians, and close to 200,000 Tartars.[308] Several movements in Crimea supported secession from Ukraine and uniting with Russia, but eventually in a referendum on December 1, 1991, Crimeans supported Ukraine's independence. Basically, Crimea is part of Ukraine, but it has some economic, social, and cultural autonomy.

Ethnic tension in the Crimea stems in part from native Russians' opposition to any type of Ukrainianization; they have denied Ukrainians local newspapers in their native language as well as schools taught in the Ukrainian language. The other problem in Crimea involves the Crimean Tartars, who, after being forced out in 1944 by Stalin, have come back to their historic homeland. In their attempts to resettle, the Tartars have experienced problems with denial of rights by local authorities as well as problems with employment and housing. Although money was set aside by the Ukrainian government to help the Tartars resettle, such funds were often used for other purposes.[309]

Jews in Ukraine have experienced increasing opportunities for expression of their culture and religion,[310] and both the Ukrainian government and Rukh,[311] a democratic opposition movement, have denounced anti-Semitism. In the opinion of Jewish leaders, a small number of anti-Semitic and fascist groups were not "encouraged from the top, and they have very few adherents among Ukrainians." Through 1994, however, sporadic anti-Semitic incidents continued to occur. Other ethnic tensions were rare, and, contrary to the situation in 1993, monitoring agencies noted no further serious anti-gypsy violence during 1994.[312]

Although Soviet-style censorship is no longer imposed, the media in Ukraine are still restricted, especially in their ability to speak out against the president and government. The 1991 law on the protection of freedom of speech and press, which applies only to print media, has proven ineffectual in the face of many obstacles. By subsidizing many newspapers, the government still exercises indirect control.[313]

Criticism of authorities is for the most part tolerated, and hundreds of small, independent newspapers oppose the government and its policies.[314] A new low on electronic media, which was adopted in 1994, permitted the operation of foreign broadcasters.[315] It also enhanced free evaluation of the government's policy. Still the main obstacle to a completely independent media is the lack of adequate funding, coupled with the high costs of paper,

printing, and distribution. In this regard, state-subsidized media have a definite advantage over independents.[316] On the other hand the government has reportedly restricted state-sponsored broadcast media in their coverage of domestic problems.[317]

The 1991 law on freedom of conscience and religion allows religious groups to organize their own places of worship. Religious organizations must register with both the government and with local authorities, and while the state has not interfered with the registration of any group, impediments to religious freedom are present at the local level.

In 1993 the U.S. State Department assessed the human rights situation in Ukraine as "mixed" and concluded that even though "few significant violations" were present, "the populace as a whole lacks an understanding of its human rights."[318] The situation did not change substantially in 1994. According to the annual report, "Continuing human rights problems include restrictions on freedom of the press and associations, unreformed legal and prison systems, and ethnic tensions in Crimea."[319]

BELARUS

Constitutional reform in Belarus was initiated shortly after the country proclaimed Belarusian laws ascendant over Soviet statutes in July 1991 and declared the republic's independence on August 25, 1991. On December 8, 1991, Belarus joined with Russia and Ukraine to declare the demise of the Soviet Union and the creation of a Commonwealth of Independent States.[320] On April 6, 1992, the constitutional committee, headed by Valentin A. Borostov, chief of the legal department of the cabinet of ministers, prepared the draft of the constitution of the Republic of Belarus. The draft was submitted for assessment by CEELI's group of attorneys with expertise in constitutional law. A compilation of individual comments was forwarded to the Belarusian constitutional committee on August 28, 1992.[321] Until the end of 1993 several versions of this draft were presented to the Soim, the Belarusian parliament, which has been again renamed supreme soviet.[322]

The draft began with a short preamble, followed by a section on the basis of the constitutional system. Article 1 described the republic as *état de droit* (a state operating according to law). This idea incorporated the most important principles found in most forms of democratic government such as separation, checking and counterbalancing of powers, a hierarchical and graduated legal system with the constitution on the top, priority of universally acknowledged norms of international law, state submission to the law, and operation of the state's authorities within the law's limits.[323] The draft recognized the people as

the single source of state sovereignty and put emphasis on forms of direct participation by people in power. Although the representative form of democracy still prevails, the draft left a number of important questions of state and social life to the decision of republic-wide and local referenda.

The choice of the presidential or parliamentary system was a difficult decision for the drafters. The draft borrowed from the French model of government,[324] but borrowed inconsistently. Similar to the French system, the draft of the Belarusian constitution recognized in the president of the republic the function of arbitrator or mediator.[325] The president was directly elected by the people, could issue orders and instructions, and could dissolve the parliament in the event of nonconfirmation of the government of the republic in the course of six months or in the event of the expression of no-confidence in the government more than twice a year. The president could ask the legislature to reconsider a bill that it had passed. The Belarusian president would not, however, need to ask the prime minister to agree to resubmission of the bill or for a countersignature for his orders. In contrast, the French government derives its legitimacy from the president. The French president appoints the prime minister, and for a long time it was not clear whether the government would be obliged to ask the National Assembly for a vote of confidence.[326] In the Belarusian draft, the president was allowed only to nominate the chairman of the government, but the chairman and the government were to be elected by the Soim, responsible to the Soim, and accountable before it. Commentators observed that the draft still "placed too much power in the hands of the Soim, the legislative branch, whose power was not adequately checked by the other branches of government."[327]

In the spring of 1993, parliament again debated the possibility of creating a presidential republic. On June 17, 1993, the Soim voted on the issue of presidential power in the new constitution; 213 deputies supported a president who is head of state and executive government, fifty-two voted for a parliamentary republic and no president, and thirty-six voted for a president as head of state. Since a minimum of 231 votes is needed to include the provision, the issue was charged to the working group.[328]

Establishing a system of judicial review seemed to be another central theme of the constitutional debate in Belarus. The issue of judicial reform was addressed in March and April 1993 by the eleventh extraordinary session of parliament. The draft laws that resulted from this session provided for strengthening the independence of the judiciary and correcting or replacing outdated legal statements.[329]

The draft also provided for a very interesting system of mixed review—both decentralized and concentrated concrete and abstract.[330] Article 133 of

the draft gave the right to decide on the constitutionality of a given normative act to any court that encountered a constitutional controversy during consideration of a specific case. The constitutional court was allowed to institute an abstract control on its own initiative and when called on by the main officials and highest courts of the republic. It was unclear whether the constitutional court also would work as an appellate constitutional tribunal and how, in the absence of a stare decisis system, the consistency of constitutional decisions would be protected. The procedure by which the constitutional court was to suspend acts recognized as unconstitutional and submit its decision for review by the Soim—while reserving the right to override the Soim's opinion, thereby depriving the act of juridical force—seemed to complicate and politicize the process of review unnecessarily and to undermine the concept of separation of powers.

Commentators also have observed that the draft did not make clear whether the new government was to be based on principles of a market economy or a socialist model.[331] However, they praised the fact that the rights secured by the draft were to be directly applicable law and that the constitutional guarantees of rights were protected from being eradicated by subsequent legislation, executive action, or judicial decision.[332] Generally speaking, although the draft provided much information on the development of the Belarusian constitutional system following its independence, the completion of constitution-drafting in this republic nonetheless required a great deal of work and lengthy nationwide discussion.

The final stages of constitution-drafting in Belarus resembled Ukrainian experiences. Similarly, as in its neighbor republic, Belarus had anticipated completion of the constitutional process by the end of 1992. However, that year parliamentary deputies were able to agree on only guidelines that obligated the constitutional commission to submit a revised draft to parliament in May 1993.[333] The constitutional debate in May–June 1993, which produced a consensus with regard to sixty-four of 153 articles of the draft, was disrupted by heated discussion concerning the entry of Belarus into a Commonwealth of Independent States security agreement.[334] The inclusion of Belarus into the collective security system was challenged by Chairman Stanislau Shuskevitch as violating a constitutional principle of neutrality. Shuskevitch's declaration to submit this issue to a nationwide referendum provoked the supreme soviet's attempt to oust and impeach him. Moreover, in 1993 the parliamentary opposition began questioning the right of the present parliament, elected under communist rules four years earlier, to vote on a new constitution. Shushkevitch also stressed the need for adopting a constitution by an independent constitutional assembly "whose only task" that would be.[335] These

disputes delayed further progress of constitutional works[336] until the spring of 1994 when a new constitution was finally adopted.[337]

In comparison with the draft, fundamental constitutional principles were not significantly changed. The 1994 constitution repeats declarations of the state's democratic character, which derives its power from the sovereignty of the people, its subordination to the rigors of an hierarchically organized system of law, and its dedication to the division of powers, political pluralism, and individualism. The drafters repeated a provision on the superiority of generally recognized principles of international law over the state's legislation, but they added a new clause prohibiting the conclusion of international treaties from being in conflict with the constitution.[338] In article 18 a new statement has been added that Belarus's aim is "to make its territory a nuclear-free zone." Also, a new article 16 declares that all religions and creeds are equal before the law and free within the limits imposed by the constitutional system, civil harmony, and citizens' rights and liberties. State and church relations would be regulated by the law.

The constitution still emphasizes the dedication of the drafters to mechanisms of direct democracy. However, the final text dropped provisions of the draft verbatim enumerating what issues can be decided exclusively by referenda. The constitution also increased the number of votes required for calling referenda, from 300,000 to 400,000 citizens and from forty to seventy deputies of the supreme soviet.[339] The number of supreme soviet deputies has been increased from 160 to 260, and the term of the legislature was fixed at five years.[340] The decision of the soviet to dissolve itself requires at least a two-thirds majority.

The new constitution clearly states that the president is elected directly for five years, cannot serve more than two terms, and is head of state and the executive. The nomination of candidates for the presidency now requires ballots of not fewer than 100,000 voters (in the draft, 25,000) and at least seventy deputies (in the draft, fifty). The candidate will be deemed elected if he or she receives an absolute majority of votes cast. If none receives the required majority, a second round of elections is held. The rules, however, were changed by the new constitution. Now the runoff is permitted only between two candidates who receive the highest number of votes in the first round. Also eliminated is the possibility of calling a new election in cases when, even in the second round, no candidate has received an absolute majority.[341]

As in Russia, the Belarusian president now has enormous power. He has the right to veto laws. He directs the executive and creates and abolishes ministries, state committees, and other central bodies. He appoints and dis-

misses some members of the cabinet, and only the selections of the premier, the premier's deputies, the ministers of foreign affairs, finance, defense, internal affairs, and the chairman of the committee for state security require the consent of the supreme soviet. As in the French system, cabinet members cannot be deputies of the supreme soviet.

It is still unclear how the constitutionally declared system of checks and balances will work in practice. Because of poor turnout, the May 1995 elections filled only 119 of 260 seats[342] in the Supreme Soviet, leaving the Belarusan legislative body far short of majority.

The results seemed to strengthen authoritarian ambitions of president Alexander Lukashenko. However, his efforts to suppress the turnout suffered a defeat when in November 1995 two subsequent rounds of elections brought an additional 79 deputies to the Supreme Soviet, giving the legislature 198 members.[343]

In comparison with the draft, the constitution limits the independence of the judiciary. The provision on the life term of judges of the supreme court and highest economic court was dropped from the constitution. Also, the justices of the constitutional court are elected to serve for eleven years, not for life, and with an age limit of sixty. The right of the ordinary courts to rule on the constitutionality of laws has been retained, but the right of the constitutional court to initiate a review on its own initiative has been curbed. The court, at its own discretion, can review only the enactments of substatutory level. Still the constitution does not give the individual any right to petition the constitutional court. The court's review can be instituted by the submission made by the president, the chairman of the supreme court, standing commissions of the supreme soviet, no fewer than seventy deputies of the supreme soviet, the supreme economic court, and the procurator general.[344] Findings of the constitutional court, however, are now final and beyond appeal or protest.

Generally speaking, efforts of the drafters of the final constitution to remove ambiguities over the division of powers were not entirely successful. The Constitutional Commission seemed to believe that this goal could be reached by further adopting some features of the French system, which clearly separates the executive and legislative authorities. The French system, however, leaves the Parliament with the decisive ability to control the executive by voting it out of office; it also gives the president the right to dissolve the parliament after consultations with the premier and the presidents of both chambers. Belarusian Supreme Soviet and the President lack such prerogatives. A hybrid system created as the result of these experiments with both parliamentary and presidential models may heavily affect an elaborate con-

cept of checks and balances that the drafters tried to set up. It may create a political environment conducive to basic political stalemates, similar to those that tormented politicians in neighboring Russia.

Human Rights Situation Of all the former Soviet republics, Belarus is considered to be "one of the most politically conservative as well as the most Russified."[345] Nonetheless, Belarus is a member of the CSCE as of January 1992 and has signed onto the UN Declaration on Human Rights and the Optional Protocol to the Convention on Civil and Political Rights. Moreover, in March 1992 a CSCE rapporteur mission was sent to Belarus and "reported favorably, in terms of human rights and respect for national minorities."[346]

The U.S. State Department in its annual report to Congress on human rights practices describes the human rights situation in Belarus as "mixed," explaining that "progress continued in some areas but flagged in others." The State Department noted that problems still occur with freedom of speech and press, freedom of religion, and freedom of movement.[347]

Although legislation in Belarus provides for freedom of the press, several restrictions affect this freedom, including the government's near monopoly over the media and its attempts to proscribe criticism, thus making press freedom not respected in practice.[348]

In an attempt to clamp down on criticism directed against the government, the executive branch persisted in using slander laws to sue publishers of such criticism. For example, in 1992 supreme soviet deputy Evgeniy Novikov was sued by a state enterprise and subsequently fined by the court for divulging that the enterprise was corrupt. In 1993 the judge, who had fined Novikov earlier, sued him for issuing a statement that disputed the judge's decision. Supreme soviet deputies Pavel Kholod and Alexandr Shut were sued by Aleksandr Kresik, chairman of the regional council of the Logoisk region, for publishing an article in March 1992 that exposed Kresik's corrupt dealings in property owned by the local government.[349] Moreover, after excerpts from her book on the war in Afghanistan detailing crimes committed by Soviet soldiers were published in a local newspaper, writer Svetlana Aleksievich was sued under the slander laws by mothers of sons killed in the war and by an Afghan war veteran. In another case, Alexandr Starikevich, the Belarusian correspondent to the Russian newspaper *Kommersant*, was sued by government officials.[350]

The government owns and principally funds almost all major news publications. Despite passage of a press law in 1994 that prohibited a news monopoly, the situation essentially did not change.[351] Most newspapers in Belarus

that are independent of the government are relatively small and lack adequate funding.[352]

The same situation holds true of the broadcast media, of which the state directly controls all radio and television stations. For the most part, these stations do not criticize the government. In 1993 the *Nika* news program, after a change in management in 1992, "took a considerably softer line toward the government." In 1993, commentators observed that government control of the media slightly relaxed as the main opposition group, the Belarusian Popular Front [BNF], was granted airtime, with no conditions attached, by the State Television-Radio Company of Belarus.[353] Also, an American-funded religious station was allowed to broadcast.[354] Still, in 1994 President Lukashenko said that he "supports a free press as long as it is responsible and helps his presidency."[355]

Soviet law still regulates demonstrations. Although public demonstrations occur regularly, organizers must apply to local authorities ten days in advance. Political parties[356] and ethnic and professional groups are permitted to freely operate in Belarus. The military, however, is not permitted to engage in any political activity, meaning that military personnel cannot join political parties.[357]

In 1992 a law on freedom of religion was passed. Currently, eighteen religious groups in Belarus function freely. Moreover, religious rallies occur without governmental interference, and proselytizing is permitted. Likewise, the U.S. State Department, in its report filed in February 1994, noted that religious freedom in Belarus is "generally respected."[358] Nonetheless, as was confirmed in its 1995 report, bureaucratic obstacles still stand in the way of complete religious freedom.[359] First, religious groups must register with the government to gain "legal status."[360] The religious composition of Belarus is primarily Eastern Orthodox, Roman Catholic, and Jewish. Much conflict occurs between the Catholic church and the government, primarily because the government associates the Catholic Church with Poland, which governed the western part of Belarus until 1939. This conflict has led the government to refuse to recognize Kazimir Svyontek, the Catholic archbishop of Polish origin, as head of the church in Belarus.[361] Many problems and delays have arisen with the government returning property seized by the communists to Orthodox, Catholic, and Jewish communities.[362] Compared to the other former Soviet republics, Belarus has had few incidents of anti-Semitism.[363]

The State Department in its report to the U.S. Congress noted that Belarusian citizens are "generally free to travel within the country." Yet relics of the Soviet era still affect freedom of movement. For instance, adults must carry

internal passports when traveling, and the right to freely choose one's residence, although provided for in law, is regulated by the *propiska* (pass) system. The State Department noted, however, that fewer requests to change one's residence are denied since the response to such requests was actually based on the availability of housing. The law on entry and exit, which went into effect January 1, 1994, permitted citizens to obtain "global exit visas," valid for one to five years, that allowed basic free travel abroad. Emigration, still regulated by Soviet laws, was restricted for individuals with knowledge of state secrets.[364] Groups seeking to investigate the human rights situation in Belarus reported that they had experienced "bureaucratic obstacles and posturing on the part of the government."[365]

Little ethnic tension comes to the fore in Belarus. The ethnic composition is 78 percent Belarusian, 13 percent Russian, 4 percent Polish, 3 percent Ukrainian, and 2 percent Lithuanian and Jewish. The supreme soviet passed a law on national minorities in late 1992 that prohibits discrimination and explicitly provides that nationality cannot be questioned either in written or oral form. Citizenship was conferred on all those residing permanently in Belarus as of October 19, 1991.[366] The CSCE noted that "other than the ethnic-related contretemps with the Catholic Church, there have been no reports of ethnic tensions."[367]

KAZAKHSTAN, KIRGHIZSTAN, AZERBAIJAN

The three republics of Central Asia and Transcaucasia share many features. They are located in the area engulfed in a long-running conflict between Armenia and Azerbaijan regarding the status of the region of Nagorno-Karabakh and plagued by ethnic and civil warfare following the toppling of the presidents of Georgia, Azerbaijan, and Tajikistan.[368] All of them lack any democratic traditions, and all received independence as a side effect of events in which they reluctantly participated.[369] These republics have economies still fully intertwined with those of their neighbors and with Moscow. Martha Brill Olcott wrote,

> As Soviet central structures withered, so too did subsidies from Moscow that had long helped feed Central Asia's ever increasing population. The region's leaders were left with sole responsibility for keeping their economies afloat. Yet technological and diplomatic expertise was sorely lacking in these new states. Each nation has tried to varying degrees to diversify its economy and exploit the interest of regional powers—most often, Iran, and Turkey. But those efforts are hindered by transportation and communication links that still follow old colonial routes through Russia.[370]

In the summer of 1992 Kirghizstan and Azerbaijan prepared drafts of the new constitutions, and on January 28, 1993, the Kazakh Supreme Kenges (parliament) adopted the republic's constitution.[371] Kyrghyzstan produced a new basic law on May 5, 1993.[372] The texts of the constitutions and drafts share so many features that they should be examined together. Although the documents seem to benefit from numerous similar projects available in other former Soviet republics, they still demand much work, and their smooth operation without a further amending process seems to be problematic.[373]

At first glance, the constitutional texts obviously need some structural reorganization to enhance their coherence, contribute to their clarity, and help flush out many possible questions of interpretation and reservations in regard to overlapping provisions. The most striking similarity linking all three drafts is the drafters' clear intention to provide a framework for a presidential system. The Azerbaijani draft describes the state *expresis verbis* as "a presidential republic," and the two other constitutions, although less explicit, leave no doubts of the drafters' similar intentions. While a tendency to incorporate some elements of the presidential model into new constitutions could be detected in many East-Central European countries, this inclination is usually halfhearted, and the presidents were presented as "senior statesmen" or "supreme arbitrators" sharing power with parliamentarily accountable chiefs of governments. The Kyrghyz, Kazakhstani, and Azerbaijani basic laws break with these half-measures and drift clearly toward an American version of presidential rule. In the opinion of the drafters, given the region's special geopolitical circumstances, this model can guarantee the rights and freedoms of citizens better than a parliamentary government.

The presidents are the heads of the states, highest executive officials, and commanders-in-chief of the armed forces. They are elected directly by the people, have the right of veto, which can be overridden by a two-thirds majority of the legislature,[374] and can issue decrees. The cabinets are headed by the presidents, who, with consent of the legislature, appoint the prime ministers and the ministers. The executive officers are accountable before the presidents.[375]

The limits of presidential power are still vague. The drafters seem to understand that the balance of powers depends on the president's and parliament's cooperation, and they try to follow, at least to some extent, the model of checks and balances. For example, the president may not dissolve parliament, and parliament may not impeach the president. On the other hand, the drafters intended to secure supreme power for the executive. The confusing results are clear, and if the ambiguities of the drafts are not resolved, political abuses may well ensue.[376]

At this moment, all three constitutional acts show a clear tendency to provide for some kind of enforcement mechanisms for constitutional rights and freedoms. The concept of judicial review requires, however, further refinement. For example, the Azerbaijani draft extended to giving the constitutional court an unprecedented power to "dissolve parliament if it repeatedly passes laws that violate the Constitution." With all the admiration of the drafters' intention to establish an effective system of constitutional protection, this provision seems to clearly infringe on the autonomy of legislative power and to affect the commonly understood principle of the division of powers. The two other texts more explicitly provide for a centralized model of constitutional review, which in Kazakhstan is vested in a special constitutional court, and in Kirghizstan in the constitutional chamber of the supreme court. Both constitutions prohibit the regular courts from applying laws that contradict the constitution, and they instruct the courts that if violations are found, the courts should suspend the trial and turn to the central constitutional authority as final arbiter.

Although the constitutions guarantee economic freedom and the inviolability of all forms of property, they do not declare clear adherence to the concept of a market economy. All three constitutional texts seem to repeat the old socialist formula limiting the freedom of the owner by the vague needs of society and interests of the people. The drafts also provide that the land and natural resources are within the state's exclusive ownership, a provision that might clearly be read as discouraging both domestic entrepreneurship and foreign investment.

Thus, despite all turbulent geopolitical circumstances, the constitutional works in the post-Soviet republics are in full bloom, and the region already has produced several brand-new constitutions. All shortcomings of the new drafts notwithstanding, this significant effort of countries having little, if any, constitutional tradition is admirable. The success of these emerging, but still imperfect and fragile, democracies is in the West's clear interest and warrants as much attention and support as possible.

Human Rights Protection With regard to human rights protection the situation in these three republics is much more diversified. The new constitutions and constitutional drafts guarantee civil rights and freedoms, but in practice the respect for these liberties varies with each country's particular rights and political situation.

The new Kazakh constitution provides for freedom of speech and press, and in practice these rights, for the most part, appear to be respected. Noting that Kazakhstan has an "increasingly pluralistic press and generally respects

freedom of speech," the U.S. State Department asserted that the government still exercises control over the media, both directly and indirectly, and that laws still apply that prohibit disparaging the president and the deputies of the supreme soviet. The government still exercises control over the broadcast media and the printing and distribution facilities, and it imposes a type of self-censorship by subsidizing "official" publications and most of the "independent" ones.[377]

However, numerous publications and numerous radio and television companies are present in Kazakhstan. Moreover, many publications are becoming more and more critical of the government and its policies, including the opposition political groups that produce their own publications in which they frequently criticize the government. In April 1944 the government appointed by President Nazarbayev turned the state radio and television agency into a corporation, which still is boycotted by independent broadcasting groups.[378]

In Azerbaijan the government still directly controls both radio and television; the opposition therefore has little, if any, ability to use the mass media. Radio and television broadcasts regularly have programs glorifying government officials.[379]

With regard to freedom of the press and broadcast media, the situation improved faster in Kyrghyzstan. In 1992 a law on the press and mass media was passed; it provided the right to publish without prior censorship, the admonition that the media should not infringe on the "privacy or dignity of individuals," and the restriction that all media must receive approval of the ministry of justice to operate.[380]

The State Department reported that since 1992 the ministry of justice has not denied approval to any publication nor has it prosecuted any individual under the law. In fact, State noted that in 1993 the press freely published "without prior government approval or restraint and was frequently critical of the President and the Government" and that the electronic media also was free from prior restraints and censorship. Radio and television were still, however, primarily owned and controlled by the government.[381]

The independent media consisted of a few independent newspapers and magazines that suffered from not having the same resources as the government-owned media and also from having to pay higher prices for necessary printing materials.[382] In 1994 the situation seemed to get worse. The government closed some newspapers critical of the president, who on August 19 established a council to control the mass media.[383]

The Kazakh constitution guarantees both freedom of assembly and freedom of association, and in 1993, according to the State Department, these freedoms were "generally respected" in practice. To hold a public demonstra-

tion, however, the organizers must secure permission from local authorities ten days before the event, otherwise the demonstration is regarded as illegal and its organizers may be incarcerated. However, in 1993 no such "illegal" demonstrations resulting in a penalty occurred.[384] To take part in elections, political parties in Kazakhstan must register with the government.[385] Moreover, a similar registration requirement is in operation for "organizations or movements that conduct public activity, hold public meetings, participate in conferences, or hold bank accounts." Some ethnic-based parties have been denied the right to register because of government speculation that their actions could lead to ethnic tension. Moreover, article 55 of the new constitution provides that "the creation and activity of public associations proclaiming or carrying out in practice racist, nationalist, social or religious intolerance, elitist exclusivity . . . is prohibited."[386]

In Azerbaijan during the state of emergency, all demonstrations were officially banned.[387] Although demonstrations had frequently taken place when former President Abulfez Elcibey was in power, under President Heydar Aliyev's new government most of them are broken up, sometimes by violent means. The government has, however, been more lenient on APF (Azerbaijan Popular Front)[388] demonstrations, and fewer and fewer demonstrators are willing to take part in them. According to the State Department, political parties and organizations were "in general allowed to freely function."[389]

Freedom of assembly and association are provided for in the new Kyrghyzstan constitution, and in 1993 these rights were respected in practice and exercised without governmental interference. Although organizers of public gatherings must first apply for a permit, no permits were inconsistently denied or granted. According to a 1991 law, all public organizations are required to sign up with the ministry of justice. This process has been hampered only by bureaucratic impediments; essentially all groups have registered with the ministry of justice.[390]

No problems have appeared with respect to religious freedom in Kazakhstan. Moreover, the constitution guarantees freedom of religion, and Kazakhstan is considered to be a "relatively secular society," untouched by any reported governmental interference.[391] However, a civil code, passed in December 1994, requires that appointments of the Kazakhstan directors of all religious organizations operating in the country be approved by the government.[392]

Freedom of religion also appears to be respected in Kyrghyzstan and in practice no governmental obstacles to the exercise of this freedom were reported. The government of Kyrghyzstan is secular, with no ties to any particular religion. The preamble to the country's new constitution provides

commitment to the "moral principles, national traditions, and spiritual values of Islam and other religions." The initial draft preamble referred only to Islam, but after many religious groups expressed their concerns, the preamble was changed to include "other religions."[393]

On August 20, 1992, Azerbaijan passed a law that provided for freedom of religion, however not if a question arose of "protection of rights and freedoms, international commitments or state security."[394] In practice, religious freedom is prevalent in Azerbaijan for all denominations, except for the Armenians, whose churches have been vandalized and in many cases remain closed.[395]

The U.S. State Department reported that in Kazakhstan freedom of internal movement is "generally respected," although the propiska system is still used by the government to control housing assignments. To travel outside Kazakhstan, an exit visa is still needed; in practice, in 1993, cases in which such visas were refused were rare. Emigration is provided for in the constitution and in practice is respected.[396]

Although the Kyrghyz government advocates freedom of travel in and out of the country, in practice policies from the Soviet era are still in effect. For instance, the internal movement of Kyrghyz citizens is controlled by the propiska system; such a pass is needed to establish a residency. Ethnic minorities allege that the government has favored the ethnic Kyrghyz, while restricting the movement of members of ethnic minorities. Kyrghyz has no official law regulating emigration. And in 1993, as some 24,000 individuals immigrated to Kyrghyzstan and 135,000 emigrated from it, immigration and emigration procedures indicated no discrimination. Moreover, to facilitate emigration of the Russian-speaking minority, Kyrghyzstan has formulated a draft agreement with Russia.[397]

All Azeri citizens must obtain an exit visa or passport to travel outside the country. Under this system, however, Armenians have suffered. In many cases, ethnic Armenians have been denied all travel documents,[398] and they often fear trying to leave Azerbaijan, worrying that they will be harassed if the authorities inspect their documents and find out ethnic identity.[399]

Ethnic problems are by far the most troublesome human rights issue in all these new republics. The ethnic composition of Kazakhstan is 43 percent Kazakh, 37 percent Russian, 7 percent Slav (primarily Ukrainian), with smaller numbers of Germans, Uzbeks, Tatars, Uyghurs, Koreans, and others. Kazakhstan is the only former Soviet republic where the largest minority is so sizable. Because of this precarious situation, relations between the Kazakhs and the Russians are extremely delicate.[400] In government-[401] and state-controlled enterprises, "increasing discrimination" favored ethnic Kazakhs, and in education and housing nonethnic Kazakhs also faced discrimination.

Even though the constitution guarantees equal political rights for all citizens, most ethnic minorities (non-Kazakhs) fear the preferences accorded to the ethnic Kazakhs, just as they fear increased discrimination within an "independent Kazakhstan" against those who do not speak the Kazakh language.[402] In 1994, Kazakhstan and Russia signed an agreement regulating the rights of minorities of each country who live or seek naturalization within the other's territory.[403]

The ethnic composition of Kyrghyzstan is 52 percent Kyrghyz, 22 percent Russian, 13 percent Uzbeks, and the rest Ukrainians, Tajiks, and Kazakhs. The government has pledged to protect the rights of ethnic minorities. Nonetheless, discrimination against the nonethnic Kyrghyz, often referred to as the Russian-speaking minority, is reported. These reports allege discrimination by the government, discrimination in employment and housing matters, and discrimination because the 1993 constitution provides that Kyrghyz is the official language. An improved situation was expected as President Akayev on June 14, 1994, issued a decree designed to protect the Russian minority's rights.[404] The most problematic conflict still seemed to be the one between the Kyrghyz and the ethnic Uzbeks in the town of Osh, which escalated into extremely violent clashes in the summer of 1990.[405]

The primary obstacle to an improved human rights situation in Azerbaijan is the ongoing Nagorno-Karabakh conflict, which since 1988 has increased in severity. The CSCE stated that it cannot assess Azerbaijan's conformity with CSCE standards "outside the countless human rights violations committed in the context of the Nagorno-Karabakh conflict." Yet, by the same token, the CSCE notes that the Azeri government has expressed its dedication to respecting human rights.[406] The situation did not change through 1994, and the U.S. Department of State Report of 1995 reported continued widespread violations of human rights.

The State Department in its annual report to the U.S. Congress on human rights practices asserted that both Armenians and Azeris "engaged in frequent human rights abuses and violations of humanitarian law, including the killing of civilians, hostage-taking, and ransoming the remains of the dead."[407] Moreover, with the fall of President Abulfez Elcibey and the rise to power of Heydar Aliyev, respect for human rights became worse. Although human rights violations occurred during Elcibey's rule, under Aliyev these violations have increased in number and severity.[408]

Especially problematic is the treatment of some 18,000 Armenians and part-Armenians living in Azerbaijan. In addition to the atrocities occurring in Nagorno-Karabakh, Armenians face many forms of blatant discrimination all over Azerbaijan, leaving most ethnic Armenians in a constant state of uncer-

tainty, afraid to venture out on the streets. Among other things, forms of harassment against ethnic Armenians include kidnappings, denial of medical treatment, and seizing of travel and residence papers.[409]

Overall evaluation of the system of protecting fundamental constitutional rights in the countries of the former Soviet Union is extremely difficult. Communism left the legacy of corruption, social futility, long-stifled animosities, and ethnic conflicts caused by policies of forced migrations; yet, democratic transformations loosened the social discipline imposed by communist rhetoric and set free all evils controlled by centralized party authorities. As Stephen Sestanovich wrote, "if Russian democracy takes hold and survives until 2005, it will not have lasted any longer than the fragile Weimar Republic—famous as the 'republic without republicans.' The comparison suggests how foolish it would be to argue, at this early date, that Russia can no longer be knocked off its democratic course. Obviously it can be. The question is, how easily?"[410] It would be foolish to disregard this possibility, and it would be foolish to push the former Soviet republics so rapidly toward a form of democracy that can hardly be digested by their politically immature societies. The chaotic efforts of these new states to absorb the Western political experience should be watched with tolerance, and attempts to improve the record in human rights protection should be carefully noted. While the denial of constitutional rights, major violations of human rights, and the lack of the will to protect those rights should be monitored, the struggle for order and stability, even at the cost of rapidly blooming democratic institutions, should also be appreciated. Expectations lay down the criteria by which progress is measured. Expectations that are too high entirely preclude progress; expectations too low force residents to live in a world in which regress is impossible. In fact, the progress in human affairs is the result of a delicate balance that consists of successes and failures, efforts and mistakes, attempts to set up rules and their violation. This is exactly what one observes in the region of former Soviet dominance, the combination of clumsy attempts and smart decisions, good intentions, and naivete—the confluence of worlds, political cultures, and traditions.

4

CONSTITUTION-DRAFTING IN THE FORMER PEOPLE'S REPUBLICS OF EAST-CENTRAL EUROPE

"The cataclysmic dissolution of Communist regimes and the clamorous awakening of the East European peoples in 1989," wrote Bruszt and David Stark, "prompted observers to overestimate the strength of organized democratic forces in these events. The stunning electoral victory of Solidarity in June, the public drama of Imre Nagy's reburial in Budapest that same month, the street demonstrations in Leipzig in October, and the massive assemblies in Prague in November were all signs of popular striving for democracy."[1]

The first "velvet revolutions" in Poland, Hungary, and Czechoslovakia placed those countries in the avant-garde of democratic transformation in East-Central Europe. The speed with which the three countries purged their basic laws of communist rhetoric raised the expectation that they would be the first in this region to adopt brand-new constitutions. In 1989, Poland announced that its new constitution might be expected in the bicentennial of the country's first constitution of May 3, 1791. The preamble of the amended constitution of Hungary referred to the text's temporary character. Since the beginning of 1990, Czechoslovakia began to adopt constitutional acts that soon were expected to be collected into one basic law. None of these expectations proved true, with the first new constitutions actually being adopted in Bulgaria and Romania, the countries traditionally recognized as strongholds of communism. Further attention should be paid to the question why countries more advanced in democratic restructuring than those two were outpaced in making constitutions.

The First "Communist" Constitutions of Postcommunist Europe

BULGARIA

Political and Economic Transformation In the 1980s, Bulgaria shared with other Soviet satellite countries most of the crucial symptoms signifying the

corroding effects of the economic crisis of the communist system. Incompetence, widespread corruption, and the unaccountability of decision-makers were incompatible with the basic principles of economic efficiency. Lack of information about the implementation of production decisions, coupled with a lack of coordination and control of that information, crippled the socialist system of central planning and decision-making. A form of decentralization, more apparent than real, also contributed to that breakdown. A moral double standard, together with massive economic dislocations, created a black market and corruption, which have been irrevocably integrated into the lives of communist countries. Bulgaria's rapid industrialization in the 1960s and 1970s and the sweeping economic shifts that resulted from the widespread collapse of agriculture also left the country greatly dependent on Western and Eastern markets. M. Todorova observed,

> The disintegration of the traditional East European and Soviet markets, which had been Bulgaria's only export possibility for the produce of its heavy, electronic, chemical, and light industries became a major problem for the effectiveness and, indeed, the very existence of these industries. On the other hand, if one considers the structure of the foreign debt, the extreme dependence of Bulgarian industries on foreign imports is indicated by the fact that over 60 percent of the hard-currency expenditures during the last five years went for the import of raw and other materials. There is practically no industrial branch whose hard-currency return is bigger than its hard-currency expenditures. The continuous devaluations of the dollar were an additional blow. On the whole, the country exports for dollars but imports for deutsche marks, yens, and schillings.[2]

The pressure for reform that swept through Eastern Europe took effect in Bulgaria starting with Bulgarian President Todor Zhivkov's unexpected resignation on November 11, 1989.[3] Petar Mladenov, the former foreign minister, replaced Zhivkov as the leader of the Bulgarian Communist Party and as the country's new president.[4]

Until December 1989, the dissident or opposition movement in Bulgaria had consisted of separate small groups with different objectives and strategies. In early December 1989 Bulgaria's nine leading opposition groups, led by Zhelyu Zhelev, joined to form the Union of Democratic Forces (UDF).[5] Under pressure from the opposition, the national assembly voted on January 15, 1990, to end the Bulgarian Communist Party's monopoly on political power.[6] The assembly also approved provisions to protect the rights of Bulgaria's ethnic Turk and Muslim minorities. Responding to the UDF's pressure for a speedy transition to a democracy, the assembly also agreed to discuss with the opposition further constitutional changes.

The Bulgarian opposition, however, faced several difficult problems. First, it was inexperienced and staked its future heavily on a negative campaign

against the communists.[7] Second, the UDF lacked charismatic leaders such as Poland's Lech Wałesa or Czechoslovakia's Václav Havel. Third, it had no real remedy for urgent problems—a mounting foreign debt, a substantial trade deficit, shortages of basic foods, poor quality of consumer products—presented by the Bulgarian economy. Fourth, the opposition had to win the confidence of a society that feared rapid changes, especially economic shock therapies. The UDF's effort to accelerate economic reform met with the electorate's reservations and criticism.

All of these problems contributed to the unexpected victory of the Bulgarian Communist Party, renamed the Bulgarian Socialist Party (BSP), in June 1990. Bulgaria became the first country in Eastern Europe to return the communists to power after holding free multiparty elections.[8] The opposition, however, managed to elevate the UDF's candidate to the position of president.[9] After five unsuccessful attempts to elect a president, parliament agreed to a "compromise candidate," Zhelyu Zhelev, who ran unopposed and won a vote of 284 to 105.[10]

The elections in Bulgaria resulted in a typical period of diarchy. After its victory, the BSP, led by Prime Minister Andrei Lukanov, formed a "coalition government of experts" with the Agrarian Union and the Movement for the Rights and Freedoms.[11] The UDF refused to join such a coalition, saying that it would not be held responsible for the economic mistakes of the interim BSP government under Prime Minister Lukanov.[12] After two weeks of street protests, a four-day general strike led by the new trade union Podkrepa, and with severe economic crisis plaguing the country, Lukanov was forced to resign on November 29, 1990.[13] On December 7, 1990, Dimitar Popov, a politically independent judge, was chosen by parliament to be the new prime minister.[14]

In February 1991 the Bulgarian economy faced drastic reforms that were implemented to facilitate the transition to a market economy. Price controls were dropped, followed by price increases of up to ten times on many basic items. Severe shortages of fuel and other necessities were suffered. The situation was grim: production had fallen 30 percent since 1989 and continued to fall, unemployment was about 7 percent and rising, and inflation was about 500 percent.[15]

It was obvious that the elections of 1991 would be dominated by economic concerns, and the results might be called a draw. Both major parties received almost identical electorate support. UDF took 110 seats and 34.36 percent of the vote; BSP, 106 seats and 33.14 percent.[16] Although the UDF received a nominally higher ballot percentage, it fell far short of securing a majority in the 240-seat parliament. Consequently, the BSP garnered enough seats to slow the pace of reform.[17]

The next showdown between the parties came with the presidential elections on January 12, 1992, the first time in Bulgaria's history that the people were allowed to elect a president. The main issues were the economy, with the monthly inflation rate at 3.5 percent, unemployment at 10 percent, and nationalism directed against the ethnic Turk minority. Incumbent President Zhelev and his vice president, Blaga Dimitrova, faced twenty-one candidates and won by a narrow margin in the runoff against the BSP candidate, Velko Valkanov.[18]

The UDF government faced an electorate exhausted by factional politics and ready to support any party that offered a coherent program of economic recovery. Many Bulgarians, disillusioned by the economic crisis as well as by the government's confrontational stance toward unions and the press, openly turned against the UDF government under Prime Minister Dimitrov; the opposition included the powerful anticommunist union Podkrepa, the postcommunist Independent Syndicate Confederation, the Confederation of Independent Trade Unions, the Movement for Rights and Freedoms, and President Zhelev.[19] Many critics asserted that the UDF government's strong anticommunist stance had only added to Bulgaria's economic problems. They claimed that a strong pro-communist sentiment persisted in the country and that the UDF had to face the fact of that opposition. Opinion polls in the autumn of 1992 gave the UDF 31 percent, down from 35 percent at the beginning of the year, while the BSP was the choice of 26 percent of those polled.[20]

In the fall of 1992 Prime Minister Filip Dimitrov resigned, and his government, the alliance of the UDF and the ethnic Turks' Movement for Rights and Freedoms (MRF) broke down after the anticommunist alliance lost a parliamentary confidence vote.[21] The popularity of the UDF also had fallen because of the failure of economic reforms and problems of returning land seized by the communists. Even President Zhelev attacked Dimitrov, stating that his "anti-communist witch hunts," were dividing "the country at the very time it needs unity."[22]

The appointment of a new government caused President Zhelev many problems. The attempt to set up a new coalition cabinet, composed of UDF and MRF members, failed on November 21, 1992.[23] In December 1992, fifty-one representatives of the national assembly turned to the constitutional court and demanded that the court issue a binding interpretation of the provisions of the constitution regulating the creation of a new government. In a closed session on December 17 the court issued a ruling that stated:

> At the beginning of this procedure (the procedure for the creation of a new government) the president is bound by the proportion of the political forces, expressed by the

size of the parliamentary groups in terms of numerical strength, as well as by the order specified by the Constitution. This order, in accordance with which the candidate indicated by the parliamentary group with the greatest numerical strength is appointed first of all (Article 99, paragraph 1) and next the candidate indicated by the second largest parliamentary group (Article 99, paragraph 2) is inviolable. The president may not at this phase make a judgment regarding whom to charge with a trial mandate and may not himself seek a candidate from another parliamentary group or outside of parliament. Matters are different, however, in the event of the inability of the first two parliamentary groups to form a government. In this event, in conformity with Article 99, paragraph 3, the Constitution assigns the designation of a candidate for prime minister to one of the following groups. The expression used premises the existence of more than three parliamentary groups. In the light of this, the Constitution prescribes that the president bestow the trail mandate on one of the next parliamentary groups, but not necessarily on the one immediately succeeding in numerical strength.[24]

The court further explained that when the national assembly consisted of three parliamentary groups, after two failed attempts to turn to the two strongest parties, the president had to entrust the group ranking third in numerical strength with the task of designating a candidate for prime minister, with no opportunity of making a judgment whether that party would be able to implement such a mandate.[25]

In December 1992, President Zhelev exercised his constitutional authority and turned to the BSP to nominate its candidate, Petar Boyadzhiev, to form a new government.[26] Zhelev canceled the nomination a week later after discovering that Boyadzihiev had dual citizenship and constitutionally could not be prime minister.[27] Zhelev then offered to appoint another MRF candidate; finally, he announced his approval of the MRF's nominee, Liuben Berov, an economic adviser to the president and a professor of economics at Sofia University. On December 30, 1992, by a parliamentary vote of 125 to 24, Berov was elected Bulgaria's prime minister, drawing support from the MRF and the BSP. The UDF boycotted the vote, accusing Berov of serving the communists; some UDF members, however, participated.[28]

Berov's government entered 1993 with solemn declarations that this government would support privatization and continuation of the reform toward a market economy.[29] Neither of those goals was reached. The volatile political situation further contributed to the faltering state of the Bulgarian economy, and privatization did not take hold; as of late August 1993, only two medium-sized firms had been privatized.[30] In September 1993 Zelev criticized Berov's cabinet, and the prime minister himself conceded "total failure of the government in privatization."[31] The UDF proposed several no-confidence votes that

were defeated after the cabinet received support from both BSP and MRF members of parliament.[32] The result has been increased support for the UDF in urban areas and a growing sense that the stalemate would not be broken without nationwide new elections.[33] In fact, as a result of the ongoing party struggles, on September 2, 1994, Prime Minister Liuben Berow resigned. Several attempts to form a government failed, and on December 18 President Zhelev dissolved parliament. The pre-term general election brought an electoral victory to the BSP, which won a clear majority of 125 seats in the 240-seat assembly.[34]

The political crisis continued through 1995 with the BSP attempting to block or cancel some of the reforms adopted during the short period of anticommunist transformation. The party repealed the law on the decommunization of science and education, adopted a law granting the state the right to preempt land property, and decided to take no action on the Bulgarian declaration to join NATO.[35] Efforts by the president to veto the pro-communist legislation were easily overridden by the BSP's absolute majority in parliament. Challenges to the BSP's legislative activity in the constitutional court met with mixed success, with the court alternatively upholding and striking down legislation.[36]

Constitutional Development All factional animosities notwithstanding, the Bulgarians were able to avoid the drastic pluralization of their legislative body that had crippled many of the constitutional reforms in Poland and Czechoslovakia. So, while the Bulgarian national assembly, which split into two major coalitions, suffered from the excessive polarization of its political forces, the existence of just two major opponents kept the assembly operational. Thus, using its significant electoral victory in 1990, the socialist coalition was positioned to push forward the process of constitution-drafting. As a result, the national assembly adopted the first brand-new constitution in East-Central Europe in July 1991.

The constitution was carefully purged of rhetoric typical of Stalinist constitutions. It dropped such terms as "people's republic," "socialist state," "socialists achievements," and "central planning." Instead, the Republic of Bulgaria is characterized as a democratic, law-governed, socialist state, based on the rule of law, principles of people's sovereignty, political pluralism, division of powers, precedence of ratified international treaties over conflicting domestic legislation, and wide protection of the fundamental rights of citizens.[37]

The 1971 constitution of the People's Republic of Bulgaria rejected the principle of division of powers, vesting all power in representative organs, the national assembly, and people's councils.[38] Two decades later, the new consti-

tution of 1991 clearly provided that "the power of the state [be] divided between a legislative, an executive, and a judicial branch."[39]

The changes in the system of governing were less elaborate. The governmental form did not change, and article 1 of the 1991 constitution provided that "Bulgaria is a republic with a parliamentary system of government."[40] The drafters shifted the functions of the state council, the collegiate head of state, to the president. Some elements of the Bulgarian constitution such as direct election of the president or the prohibition of a joint appointment as a minister and a national representative,[41] were borrowed from the French model.[42] Otherwise, the role of the president is envisaged as that of a senior statesman who represents Bulgaria in international relations and consults the parliamentary groups in the process of nominating the candidate for prime minister.[43] The president's discretion to choose his own candidate for prime minister is limited; he either has to nominate the candidate of the largest parliamentary group, or, respectively, the candidates of the second-largest and other major parties if the previous appointees fail to propose the cabinet in seven days. If the national assembly subsequently is unable to nominate its own candidate, the president has to appoint a "caretaker cabinet" and dissolve the assembly. The president does have a right to veto legislative acts, which can be overridden by more than half of all national assembly members.[44] He can issue decrees that, with the exception of listed instances, require the countersignature of the prime minister.[45] State of emergency or martial law are declared by the national assembly on a motion from the president or the council of ministers.[46] Presidents also schedule referenda, but the decision to hold them belongs to the assembly.[47] Neither is the president chief of the executive branch. That position is held by the prime minister, who is fully responsible to the national assembly.

Justice is administered by the courts and supervised by the supreme court of appeals. The judiciary has independent and coequal status with the legislature and the executive.[48] The 1991 constitution also provides for a system of administrative adjudication exercised by the supreme administrative court.[49] Judges, prosecutors, and investigators are appointed, promoted, demoted, transferred, or dismissed by the high judicial council, a self-governing body composed of the presidents of the supreme courts and appointees of the national assembly and judicial authorities. The presidents of the supreme courts are appointed or dismissed by the president of the republic on the recommendation of the high judicial council.[50]

In July 1994 the National Assembly adopted the act on the judicial system, which immediately was challenged as unconstitutional in the constitutional

court. On August 11 the court rejected the claim of unconstitutionality by a tie vote of six-to-six, and the act came into force, creating a confusing situation in the Bulgarian judicial system. Commentators observed, that "the paradox of this decision is that the new court system was created prior to the adoption of procedural laws specifying how courts should function. Consequently, Bulgaria now has two parallel court systems: the old courts, which were officially abolished, but nevertheless continue to operate on the basis of existing procedural laws, and the new courts, which were officially established but cannot function until a new procedural code is adopted. It is not immediately clear what the consequences of this confusing situation will be and how the problems it creates will be resolved."[51]

The constitution established the constitutional court, based on Western European models, which consists of twelve justices, elected in the modified French fashion:[52] one-third by the national assembly, one-third by the president, and one-third jointly by the justices of the supreme court of appeals and the supreme administrative court. The court has elaborate advisory and arbitrary functions, and it has been vested by the constitution with the right of abstract constitutional review, which may be exercised on the initiative of no less than one-fifth of the national representatives, the president, the council of ministers, the supreme court of appeals, the supreme administrative court, or the prosecutor general. The decisions of the court are final, and any act ruled unconstitutional becomes invalid as of the day of the enactment of the ruling.[53] Until recently, the court focused on issues dealing with separation of powers and was criticized for not being active in human rights cases. As Rumyana Kolarova wrote, "during the last year and a half the Bulgarian Constitutional Court has played a key role in almost all essential political changes. But it has done so through careful self-restricting decision-making, more as a moderator than an active participant."[54]

To sum up, the Bulgarian constitution of 1991 can be praised for its clarity and coherence, its well-balanced concept of a parliamentary system, its judicial review of administrative actions, and its elaborate system of judicial self-government. Presidential and executive relations are still confusing, and the prime minister lacks the maneuverability of the British prime minister or the German chancellor. The scope of constitutional review is still fairly limited, and the functions of the constitutional court, which cannot be activated either by the ordinary courts or individual petitions, are predominantly advisory. Despite these shortcomings, however, the 1991 Bulgarian constitution attracted significant media attention as the first brand-new constitution of the post-glasnost period in East-Central Europe.

Protection of Fundamental Constitutional Rights The list of fundamental rights in the Bulgarian constitution is long and impressive, and the Western commentator must admit that the drafters successfully avoided many defects of other postsocialist bills of rights. "Everyone's freedoms" received wide coverage in the Bulgarian constitution; foreigners who reside in the Republic of Bulgaria have all rights granted by the constitution with the exception of a few political freedoms reserved for Bulgarian citizens.[55] The drafters replaced the typical socialist clause limiting individual rights and freedoms for the interests of the society, with the well-known liberal formula of "equal freedom" limited only by equal rights of shareholders of social wealth. The constitution declares that "the fundamental rights of citizens are irrevocable. These rights may not be abused and may not be exercised to the detriment of the rights or legitimate interests of others."[56]

The catalog of social, economic, and cultural rights is exhaustive, but the drafters tried to emphasize that constitutional provisions are a declaration of policies promoted by the state. For example, the constitution confirms that "citizens have the right to work," but drafters added a less promissory statement that, "the state is concerned with providing conditions for the exercise of this right."[57] Private and public property is protected by law and Bulgaria's economy is described as one "based on free economic initiative."[58] Still, Bulgaria, referred to as a "social state," is the sole owner of all underground resources, coastal beaches, public roadways, waters, forests, and parks of national significance. The language used to describe land ownership seems to be deliberately ambiguous, the constitution stating only that "the land is a basic national resource and benefits from the special protection of the state and society" and that "arable land may be used exclusively for agricultural purposes."[59]

The overall human rights situation in Bulgaria was described as "generally good" in 1992 by the U.S. Department of State in its annual country-by-country report to the American Congress.[60] Freedoms of the press, of association, and of travel were "generally respected."[61] Moreover, according to the CSCE, Bulgaria has made "impressive strides towards becoming a democratic state based on the rule of law" since 1989.[62] Finally, Bulgaria is considered to have "a good record of compliance with its CSCE human dimension commitments."[63] In 1992, Bulgaria ratified the European Convention on Human Rights, accepted the optional protocol under the International Covenant on Civil and Political Rights, and in May was admitted as a full member of the Council of Europe. Along with the government's general efforts to improve its record in protecting human rights, however, the monitoring agencies ob-

served increasing xenophobia, nationalism, and expressions of antiethnic sentiment among the population at large.[64]

Thus, despite Bulgaria's overall progress in respecting human rights, critical areas remain where the country needs to direct future efforts. As mentioned, the Bulgarian constitution lists many rights and freedoms, and they are generally respected. However, no concrete legislation has been passed to strengthen the rights enumerated in the constitution, nor is there a coherent judicial procedure in the constitutional court for handling individual petitions for human rights violations.

Perhaps the most problematic issue is the widespread discrimination against ethnic minorities. This problem seems to be made worse by the country's critical economic situation. Although the government has been addressing the problems of the minorities, constitutional provisions and societal forces still promote marginalization of the various ethnic minorities. Bulgaria's ethnic composition is divided between a Muslim Turkish minority population of approximately 822,000, about 288,000 Gypsies, and smaller ethnic groups that include Pomaks, Macedonians, Armenians, Jews, and Greeks.[65]

The Bulgarian constitution guarantees individual rights and equality,[66] but it does not protect the collective rights of minorities, rejecting the use of the word "minority" altogether.[67] Despite this intended denial of the seriousness of ethnic problems in Bulgaria, in reality their existence is confirmed by numerous Western commentators. The government continues to work toward redressing the grievances of those Turks living in Bulgaria who were subject to mandatory assimilation by the communist government under Todor Zhivkov from 1984 until 1989.[68] Under the assimilation campaign, the Turks were forced to adopt Bulgarian names and were prohibited from speaking their native language and from practicing their religion and culture. This campaign resulted in the 1989 flight of more than 350,000 Turks to Turkey.[69] Since the downfall of the communists in 1989, the treatment of Turks and other ethnic minorities has clearly improved,[70] although some forms of discrimination still exist. For instance, it is often emphasized that the minorities in Bulgaria have been unable to fully effect their cultural and political rights.

The constitution provides for the right to peaceful and unarmed assembly and the right to form associations.[71] Although peaceful protests are by and large permitted in Bulgaria,[72] they are, in reality, subject to several restrictions. First of all, the constitutional provision only protects Bulgarian citizens, and permits are required for allies and assemblies held outdoors. Second, organizations that threaten the country's territorial integrity or unity, or that incite racial, ethnic or religious hatred, are prohibited by the constitution.[73] Third,

the constitution specifically forbids the establishment of ethnic-based political parties[74] and prohibits citizens' associations, including trade unions, from engaging in political activity.[75] These provisions directly affect the ability of the ethnic Turkish groups, the Roma (Gypsy minority), and other ethnic minorities from having a meaningful role in politics. In early October 1993 the U.S. ambassador to Bulgaria, William Montgomery, promised to seek changes in the Bulgarian constitution, specifically the provision that prevents ethnic-based political parties.[76]

Likewise, a clause in the Bulgarian electoral law prohibits any organization not legally registered as a political party from running an independent list of candidates in parliamentary or local elections.[77] This provision and a ban of ethnically based political parties seemed to particularly affect the MRF, a political party created by the Turkish minority in January 1990. In 1991 a court denied the MRF the right to renew its registration as a political party. However, the central electoral commission ruled that the MRF's 1990 registration for the parliamentary elections was still valid. The electoral commission's ruling was challenged in both the constitutional court and in the supreme court. The courts' decisions softened the interpretation of the constitutional ban indicating that it had to be interpreted in accordance with other portions of the constitution and that no ethnic-based political party would be allowed if the party sanctions ethnic supremacy or conflict. As a result of these decisions, the MRF played an important role in the parliamentary elections of October 1991 as it secured twenty-four seats in the national assembly and joined forces with the Union of Democratic Forces to form a coalition government.

Most problematic, as is the case in most other Central and East European countries, is the treatment of the Roma.[78] Although respect for basic freedoms of the Roma has improved since the communist era, they still face discrimination. Numerous cases have been reported of police mistreatment of Gypsies.[79] The leadership of the Gypsy Union stated in June 1993 that "Bulgarian Gypsies are subjected to discrimination, police violence and human rights violations . . . [and] to manipulation by parties and the media, administrative oppression, insolence in the administration of the law and cynical nationalism."[80] In September 1992, Amnesty International wrote to the minister of justice concerning treatment of the Roma. The minister responded in October 1992 that "the Ministry of the Interior has initiated a prompt and impartial investigation of the minority situation here in Bulgaria."[81] Still, in 1993 numerous incidents of police mistreatment of Roma were reported; the following year, although incidents of human rights violations by governmental agencies and complaints of police brutality were less frequent, Amnesty Inter-

national charged that "the government violated human rights by failing to provide [for] their adequate protection."[82]

Human rights monitoring agencies also observed that since the fall of communism, religious freedoms have expanded, and the average citizen is allowed to freely exercise his or her religion.[83] The constitution provides for freedom of religion,[84] with no restraints on attending religious services, taking part in religious education, reading religious publications, or having contacts with other religious people abroad.[85] Religious materials, including Bibles, can be freely imported and printed. Various religious newspapers for Muslims, Catholics, or Jews are regularly printed.[86] Church property, confiscated or closed during communist rule, has been returned or reopened.

Religious freedoms guaranteed by the constitution, however, are limited by two provisions. The first states that "the Eastern Orthodox religion is the traditional religion of the Republic of Bulgaria";[87] the second provides that all religious entities must register with the directorate of religious affairs (DRA), which was created in 1991.[88] Since its establishment, the DRA has been involved in a number of contentious removals of the leaders of both Eastern Orthodox and Muslim religions.[89] In 1992 more than twenty-five religious groups were registered with the DRA;[90] however, registration was permitted only if the religion's tenets were consistent with Bulgarian law and so long as "the election of religious officials is properly conducted.[91] Although no religious group was denied the right to register with the DRA, commentators in 1992 noted that the provision seemed to work against constitutional provision for separation of church and state.[92] Observers in 1994 saw a rising tide of intolerance in Bulgaria. Parliament amended the families and persons act and tightened registration requirements for religious groups. More than seventy-five already registered groups were forced to apply for new registration at the religious affairs directorate, and more than two-thirds of them were denied.[93]

The constitutional right to emigrate and travel abroad is permitted for all Bulgarians, and as of January 1991 Bulgarians no longer needed to obtain exit visas.[94] The only restrictions on this right were for exceptional circumstances such as national security.[95] Every citizen had the right to return to Bulgaria[96] and might not be forcibly expatriated[97] or deprived of citizenship acquired at birth.[98] In response to the country's critical economic situation, thousands of Bulgarians left in 1992 seeking better opportunities abroad.

The Bulgarian media are relatively free. The constitution forbids censorship[99] and widely varied political views are expressed in an array of newspapers, journals, and books. Moreover, independent radio stations have emerged. In 1994 more than thirty independent stations were reported to be

broadcasting in Bulgaria, and in July of that year the first private television channel was licensed.[100] Many newspapers are affiliated with political parties or trade unions and likewise are highly politicized.[101] Charges were made that censorship had occurred in dismissals of media personnel. Parliament removed Asen Agov, director general of national television under the UDF-Dimitrov government, after Agov made numerous innovative changes in Bulgarian television programming. Also, in June 1993, Prime Minister Berov removed Ivo Indzev, director of the state news agency (BTA), for giving distorted information pertaining to state institutions. In July 1993 the Bulgarian supreme court stated that the government had no authority to exercise control over the agency and ruled that Indzev's removal was unconstitutional.[102]

Conclusions of the CSCE report on human rights and democratization in Bulgaria seemed to correctly summarize the situation in the mid-1990s:

> While Bulgaria faces considerable problems in its post-communist transition, and will continue to in the foreseeable future, it is doing much better than most of its Balkan neighbors. Moreover, it is exceeding the expectations of those who until recently viewed Bulgaria through the prism of being the Soviet Union's "16th republic" and the home of papal assassination plots and forcible assimilation campaigns. Despite its very real problems, Bulgaria is indicating that it is more tolerant, pluralistic, democratic and stable than many would have supposed.[103]

ROMANIA

Political and Economic Transformation Communist dictator Nicolae Ceauşescu's rule ended in late December 1989. Following the Timişoara demonstrations and a week-long outburst of hostilities in Bucharest that pitted protesters against the securitate (state secret police) and troops loyal to Ceauşescu, the dictator was ousted and executed on December 25, 1989. Several days before his execution, a new provisional government, the Council of the National Salvation Front (CNSF), was formed to serve until May 1990, when Romania would hold free parliamentary elections.[104] CNSF leaders took over the main governmental positions. Ion Iliescu, a former Communist Party official who was deposed by Ceauşescu, became president; Dumitru Mazilu, a diplomat who was placed under house arrest for criticizing the dictator, was named vice president; and Petre Roman, a professor at the polytechnic institute, was appointed prime minister.[105]

The question of how the CNSF was actually formed was the subject of controversy; many observers speculated that the group had been in existence for many months before December's revolution. The council officially an-

nounced its existence on national television on December 22; at that time it had thirty-nine members consisting of dissidents, former Communist Party members, intellectuals, and artists. By early January 1990 the CNSF had grown to 150 members.[106] On February 2, 1990, under pressure from opposition groups, the CNSF relinquished its control over the government, reorganized as a political party, and joined with twenty-nine other political parties to form an interim coalition government.[107] Basically, any group that met the requirements for forming an official political party was eligible to join the new interim government.[108] The new government, which was to rule the country until the May 1990 elections, was called the Provisional Council for National Unity.[109]

Presidential and parliamentary elections set for May 1990 marked the first free balloting in Romania in sixty-two years. The only three parties represented in the presidential elections were the National Salvation Front (NSF), whose candidate was Ion Iliescu; the National Peasant's party (NPP), with Ion Ratiu as its candidate; and the National Liberal party (NLP), which put forward Radu Campeanu. More than eighty parties ran candidates in elections for parliament's lower and upper houses: 397 seats in the national assembly and 190 seats in the senate.[110] The elections resulted in a landslide victory for the left-wing NSF. Iliescu was elected president, receiving 85.07 percent of the vote, and the NSF won a two-thirds majority in both houses of parliament, receiving 62.31 percent of the ballots for the lower house and 67.02 percent for the upper.[111] Although both victories had been predicted, the NSF's margin over its opposition was surprisingly large.

As president, Iliescu began a program of "dismantling centralized planning in favor of freer markets."[112] Further, the NSF advocated a "gradual transition to a market economy with the emphasis on social guarantees for the working people," which would avoid shock therapy reforms.[113] In June 1990 President Iliescu appointed Petre Roman as prime minister; and Roman, in turn, appointed a twenty-three-member cabinet composed mostly of technocrats and with no opposition representatives. This lack of representation sparked student demonstrations against the NSF at Bucharest University in mid-June 1990; the students accused the Front of neocommunism and established a "Communist-free zone" in the city center.[114] Thousands of miners, on Iliescu's call, arrived in Bucharest and broke up the demonstration by beating the students in the presence of police.[115]

The next tide of protests in Bucharest was caused by the reorganization of the Romanian Communist Party. The party, which virtually disappeared after it was ousted in December 1989, reorganized as the Socialist Party of Labor (SPL) in November 1990. This new party was created by members of the former Communist party joining with the left-wing Democratic Party

of Labor.[116] Creation of the SPL was met with protests from opposition forces in Bucharest's streets and in parliament. Protesters, who viewed the SPL as merely a secret creation of Iliescu and the NSF, demanded the president's resignation.[117]

Through the end of 1990 and the first half of 1991, protests against the government continued, resulting in Prime Minister Roman's resignation on September 26, 1991. Violence began on September 25 when Romanian miners gathered in Bucharest to demand higher wages and better living conditions. The miners were soon joined by city residents protesting both the government and the economic crisis plaguing the country. This time the demonstrators demanded the president's and prime minister's resignations. Succumbing to the pressure, Roman resigned but remained in office until the new government of Theodor Stolojan was ready to take over.[118]

Looking ahead to the next general elections in September 1992, it appeared that the opposition parties would need to join forces to challenge the incumbent NSF. As early as November 1991 the NPL leader Radu Campeanu started to unite the NPL, the NPP, the Democratic Union of Hungarians in Romania (DUHR), and other opposition parties in an attempt to form some sort of alliance to run against the NSF.[119] Such an alliance was finally formed in November 1991 under the name Democratic Convention. The convention, composed of eighteen different groups, said it was seeking to remove from Romania "communism, primitive nationalism, extremism, and chauvinism" and in turn institute the rule of law as well as a market economy.[120]

As the 1992 elections drew closer, it appeared that Iliescu, who had relinquished his party membership on assuming the presidency, would seek to secure his reelection by disassociating himself from the radical economic program of the NSF. He successfully presented himself as a senior statesman standing above factional conflicts, presiding over steady, free-market, and democratic reforms but opposing any drastic "surgical" changes. The preelection position contributed to the split between Iliescu supporters and supporters of former Prime Minister Roman. Roman has called Iliescu "a neocommunist who depends on the Romanian Intelligence Service for survival," while describing himself as "the only capable reformer in politics today."[121] To stand out from Roman's National Salvation Front, the ruling left-wing pro-Iliescu faction began calling itself Democratic National Salvation Front (DNSF), and the power struggle between the NSF and the DNSF immediately moved to the forefront of Romania's political scene.

Iliescu's chances for reelection were also enhanced by the split in the opposition camp. In May 1992, Campeanu removed the NLP from the Democratic Convention, thus dashing any hopes that the convention would become

Table 1: Distribution of Seats by Party in Romanian Parliament of 1992.

PARTIES	ASSEMBLY	SENATE
Democratic National Salvation Front	117	49
Democratic Convention of Romania Alliance	82	34
National Salvation Front	43	18
Romanian National Unity Party	30	14
Hungarian Democratic Union of Romania	27	12
Greater Romania Party	16	6
Socialist Labor Party	13	5
Agrarian Democratic Party of Romania	—	5
Total	328	143

the biggest electoral bloc. The main reason behind this split was the NLP's failure to agree with the Democratic convention on power-sharing. Moreover, this action by the NLP blocked any chance that one party would win more than 20 percent of the seats in parliament.[122]

As had been predicted, no candidate in the presidential race won an absolute majority, thus making a second-round runoff mandatory. What was surprising was the fact that, despite national opinion polls, Iliescu received a higher percentage of votes than the main opposition candidate, Emil Constantinescu. The second-round, runoff presidential election was held on October 11, 1992, with Iliescu winning more than 61 percent of the vote to beat out Constantinescu (39 percent).[123]

In the parliamentary elections the results were even more surprising as the former communists, receiving about 30 percent of the vote and defying earlier predictions, prevailed over the democrats who received only 20 percent of the vote.[124] However, since no party won a clear majority, future legislative action depended on the winners' ability to form a coalition government. The task took almost a month, but finally, on November 4, 1992, at a meeting between Iliescu and parliamentary party leaders, Nicolae Vacaroiu—a "man of reform," according to Iliescu[125]—was appointed the new prime minister.[126]

Distribution of seats after the general election of September 27, 1992, can be seen in table 1.

To display their disapproval of Vacaroiu's program, the opposition parties made several moves unprecedented in postwar Romanian politics. In early

January 1993 the opposition, led by the NSF, formed a "shadow cabinet" to "fight the shortcomings of the present government,"[127] and on March 12, 1993, it submitted a motion of no-confidence in the economic program.[128] According to the constitution, such a motion must be debated by parliament within three days and then submitted to a secret ballot. Basically the motion put forward by the opposition described the current government as "disoriented" and said its plans would plunge Romania deeper into economic crisis.[129] On March 19, the government's economic strategy was put to a vote in parliament, the first parliamentary no-confidence motion in seven decades, with the result being 260–192 in the government's favor.[130] Although the government survived this vote, its position had been severely weakened by the slowdown in economic reforms and by rising unemployment, triple-digit inflation, and low wages.

In the midst of the ongoing power struggle, both the ruling party and the opposition parties searched for new partners and attempted to improve their status and reputation. In late May 1993 the NSF held a national conference to adopt a new name, hoping to help revamp its image. The NSF switched its name to Democratic Party NSF, keeping the initials NSF to serve as a reminder that the party was formed in difficult political circumstances.[131] In July 1993 the DNSF held a conference at which it also adopted a new name. The new name of the DNSF is "Social Democratic Union."[132] Moreover, the opposition has formed a united front against the minority government. On June 17, 1993, the Democratic convention and the DNSF signed a pact agreeing to negotiate jointly.[133] Almost in response to this consolidation of the opposition, the governmental faction, DNSF, entered into a pact on June 25, 1993, with communist and hard-line nationalist parties, including the Socialist Labor Party, the Great Romania party and the anti-Hungarian Romanian National Unity Party.[134] On December 7, 1993, the Vacaroiu cabinet survived another vote of no-confidence by the narrow margin of 236–223.

In 1994 the pressure from the opposition for a change of government continued to mount, and it was widely believed that the government would be forced to call new elections. Despite these predictions, the Vacaroiu cabinet outlasted the new parliamentary struggles, and in 1995 both the ruling coalition and the opposition began gearing up for the 1996 elections. After internal crisis and heated campaigning, the opposition, led by the Democratic Convention of Romania (DCR) and the National Peasant Party (NPP) elected Emil Constantinescu as the coalition's presidential candidate. The governing coalition, after several shakeups and reshufflings, also tried to discipline its rank-and-file members and to present a new program emphasizing "law and order"

reforms.[135] It remained to be seen whether warming up for the campaign trail also would impart to Romanian politicians a new lesson in political culture.

Development and Major Provisions of the 1991 Constitution Communist dominance in the Romanian national assembly in 1990–91 had undoubtedly one beneficial aspect. Communists, attempting to establish their reputation as reformers, declared that the primary task of the new parliament would be to draft a new constitution. The communist-dominated parliament completed its task of adopting a new constitution fifteen months after a constitutional commission was formed in June 1990. The commission, consisting of parliamentary deputies from Iliescu's National Salvation Front, discussed the draft constitution with the group of CEELI experts in the summer and autumn of 1991 in Bucharest and Washington, D.C. Preliminary and final drafts were debated in the full constituent assembly (which doubles as the regular parliament), and, after being submitted to a referendum, the final draft was passed on November 21, 1991, and promulgated on December 8.[136]

The constitution should be praised for its clear structure and compact character. The list of constitutional rights is long and impressive at first glance. The document guarantees equality of rights; individual freedom and personal security; rights to free movement and privacy; freedom of religion, of assembly, of speech, and press; confidentiality of correspondence; inviolability of domicile; major political, social, and economic rights, such as the rights to vote and to be elected; rights to education, to information, to health care; the right to strike; the protection of private property; and more.

Careful examination of this list may raise several concerns. For example, minority interests, notoriously Romania's problem, require more sophisticated safeguards than the regular guarantees of equality before the law, impartiality of the courts, and respect for minorities' languages.[137] Also, the protection of the rights of aliens do not measure up to current international standards, which offer equal protection before the law to "the persons," including foreigners, rather than only to "the citizens" of the country.[138] Among other problems, if citizens' freedom of movement is to be protected, restrictions of this right should be laid down by the constitution, not by ordinary law. Restricting the exercise of individual rights and freedoms on the basis of offending a vaguely defined "public morality" may also raise some questions.[139]

Generally, the evaluation of constitutional rights is always difficult without examining judicial enforcement of constitutional guarantees. Here, some observations deserve notice. The Romanian constitutional court, established on

the basis of a law adopted by the national assembly on May 16, 1992,[140] follows the French model of political rather than sensu stricto judicial review.[141] The court, composed of nine justices serving nine-year terms, three of them appointed by the chamber of deputies, three by the senate, and three by the president. The right to initiate constitutional review is reserved to a few political figures who will generally belong to the same majority that passed the challenged statue, such as the presidents of the two chambers, or at least fifty deputes and twenty-five senators.[142] In addition, the right to initiate a review of laws before their promulgation is vested in the president and the supreme court.

The Romanian court has only limited authority to decide on the constitutionality of laws in force and cannot rule on the constitutionality of already ratified international agreements. The court's right to hear individual complaints on violations of constitutionally guaranteed rights is extremely vague. Theoretically, the court may be convened on the request of the ordinary courts that have decided to accept motions challenging the constitutionality of laws and rulings. However, it remains to be seen how energetically the courts will use discretion to reach the constitutional court in individual challenges. Thus, with the exception of the power of review when a legislative enactment has been drafted but not yet promulgated, and in addition to some supervisory functions, the powers of the Romanian constitutional court are limited. A court decision concerning the unconstitutionality of laws may be overruled by a two-thirds majority of parliament.

In France the quasipolitical system of constitutional review works in combination with a network of administrative courts, with the Conseil d'Etat at the top, reviewing the legality of administrative acts. When the Romanian constitution was adopted, it was widely expressed that in the absence of an equivalent system, the judicial enforcement of constitutional rights in Romania may still be difficult. These predictions only partially proved to be true. Although the chamber of deputies frequently overrode the court's decisions, the Romanian constitutional court was amazingly active. In 1994 the court with a mixed success tried to block governmental attempts to take over some legislative functions from the parliament. The court upheld some of governmental ordinances and orders,[143] but it also successfully defended its position that the implementation of the act recognized as unconstitutional by the court had to be suspended until the second vote by a qualified majority was taken in the parliament.

In 1995, despite the significant majority controlled by the governing coalition, the court became an institution used on a permanent basis by the opposition to challenge the government's policy. "All major decisions by Parliament

have been deemed inconstitutional. Among the laws challenged by the constitutional court were the Law for Social Security, the Law Regarding the Status of Deputies and Senators, the Law of Empowering the Government to Issue Orders, the education law, the decision to overrule debates on the motion of local administration, and the decision to bring into use a Rule Concerning Confidential Papers in the Chamber of Deputies, as well as the laws concerning nationalized buildings, the privatization law, and ordinance no. 1."[144] This record clearly shows that either the court is too partisan and the procedure for its activation should be amended, or the government on a permanent basis operates beyond the sphere authorized by the constitution. Both conclusions mean that institutions of democratic control in Romania still do not function properly.

The constitution created a parliamentary form of government with dual executive and bicameral legislative frameworks. The rationale for a second chamber in the Rumanian system is not clear. The chambers are equal and elected in the same way. Both deputies and senators represent the entire country and cannot be bound by instructions of their constituencies. The frequency with which both chambers jointly meet further confirms that basically their functions are the same.

Second chambers usually are set up to promote regionalism, as in Belgium, Spain, and Italy, are federal components of the legislative bodies, as with the United States, Germany, Switzerland, Russia, and the former Yugoslavia, or simply have survived in countries with strong traditions of bicameralism, such as the United Kingdom. In some new democracies of East-Central Europe—Poland, for one—second chambers were established to counterbalance the communist nomenklatura's influence in the first chamber. As none of these reasons characterizes the Romanian political environment, the existence of two chambers seems to be of little use.[145]

The chambers of the Romanian parliament meet twice each year,[146] first time from February until the end of June, the second from September until the end of December. The chambers may be convened for extraordinary sessions if requested by the president of the republic, the permanent bureau, and at least one-third of the deputies or senators. The chambers also meet in joint sessions, which are called to receive the president's message; to approve the state operating and social security budgets; to declare mobilization, to declare a state of war, or to suspend or cease military actions; to examine reports of the Supreme Council for the Defense of the Country and the court of accounts; to appoint the intelligence service's director and to monitor the operations of his office; and for other functions as provided by law. The presidents preside over permanent bureaus elected for both chambers, each

of which also forms its own permanent commissions and can appoint investigative commissions or special commissions on an ad hoc basis.

Parliamentary groups have the powers to propose a number of members to be designated in the validations committee, to propose candidates for the office of president of each chamber and of the chambers' permanent committees, to propose members of parliamentary committees, to request changes of agenda sittings, to present written amendments to bills, to present the group's opinion on bills, to propose secrecy of certain sessions, and to request the end of debates. Deputies and senators are forbidden from changing the parliamentary groups, which, regardless of size, are guaranteed the right to participate in the legislative process and in parliamentary control.

Deputies and senators may not be held liable to judicial proceedings for political opinions or votes cast, and they may not be detained, arrested, searched, or prosecuted for criminal or minor offenses without consent of their respective chamber. If a deputy or senator is caught in a criminal act, he may be detained and searched, but the minister of justice must immediately inform the president of the chamber of the detention.

In case of a request for waiving immunity, the president of the chamber must so inform the deputies or senators. The request is then sent to the legal, discipline, and immunities committee for examination, and the committee decides if the request is valid. The committee's report is then submitted to the chamber for debate and a secret vote.

Following the French constitutional model, the Romanian constitution describes the hierarchy of laws. It provides that parliament adopt constitutional, statutory, and ordinary laws. Constitutional laws are established to revise the constitution; such revisions, however, cannot eliminate constitutional provisions on basic rights and freedoms or on guarantees of such rights and freedoms. Provisions regarding the national, independent, unitary, and indivisible character of the state, the republican form of government, territorial integrity, the independence of the judicial system, political pluralism, and the official language also cannot be amended. The constitution, as well, cannot be amended during a period of martial law or a state of emergency. Initiation of the revisions must be by the president of the republic, on the government's request, by one-fourth of the deputies and senators, or by at least 500,000 citizens who come from the Bucharest municipality and from at least half the counties in Romania, with at least 20,000 voters endorsing the request in each county. The draft of the amendment or the recommendation for revision of the constitution must be approved by a two-thirds majority of each chamber's members. If the chambers disagree and no agreement is reached by mediation, they take action on drafting the amendment in a joint

session by a vote of at least three-fourths of all deputies and senators. The revision must be approved by a referendum called within thirty days of draft approval or recommendation for revision.

Statutory law areas include the electoral system; the organization and operation of political parties; the organization and holding of a referendum; the organization of the government and of the Supreme Council for the Defense of the Country; martial law and emergency regulations; violations of law, punishments, and execution of punishments; granting of amnesty or pardon; the organization and operation of the higher council of magistrates, courts of law, the public ministry, and the court of accounts; the status of public functionaries; administrative litigation; the general juridical system of ownership and inheritance; the general system of labor relations, trade unions, and social aid; the general organization of education; the general operation of religious denominations; the organization of local and county-wide administrations; the general system of local autonomy; and the manner determining exclusive economic zones. Other laws adopted by the parliament have the character of ordinary laws. Statutory laws and decisions regarding regulations of chamber proceedings are approved by a majority of the members of each chamber.

Legislative initiative is vested in the government, the deputies, the senators, and at least 250,000 citizens who have the right to vote signing a legislative proposal in half the republic's counties and in the Bucharest municipality, with at least 10,000 signatures collected in each county. Citizens cannot propose legislation on fiscal matters, international issues, amnesty, or pardon.

The parties authorized to initiate legislation may consult the legislative council, a specialized consultative organ of parliament set up to coordinate the legislative process with a view toward its systematization and unification. Bills may be initiated in either chamber, and after being passed by one chamber, each is sent to the other for approval. If the second chamber fails to approve the bill, it is returned to the chamber where it was initiated. After a second debate, the bill is sent back to the seconding chamber. A second rejection is final. A mediation commission consisting of an equal number of representatives from each chamber may be established to work out agreements between the chambers. If one chamber does not approve the mediation commission's report, or if the commission does not reach an agreement, the bill is submitted for final approval in a joint session. The approval of statutory laws requires a vote of a majority of all members of both chambers, and ordinary laws require a majority vote of the members present in a joint session. In the area of ordinary laws, the Romanian parliament, again following the French constitutional model, can pass a special law delegating to the government the power to legislate through decrees.

Laws are sent to the president for promulgation, which must occur within twenty days after a law is received. The president may ask the parliament to reconsider the law, or he may ask the constitutional court to review its constitutionality. A law endorsed by parliament, or one deemed constitutional by the constitutional court, must be promulgated within ten days of its receipt by the president.

Proposals for the state operating and social security budgets are prepared each year by the government and submitted to parliament. To approve the operating budget, the chambers meet in joint sessions. If budget laws are not approved at least three days before the end of the budgetary year, legal operations will be extended until new budgets are approved. Budgetary administration is monitored by the court of accounts, whose members are appointed by parliament and who enjoy the same immunities as judges. The court of accounts presents annual reports on governmental administration of budgetary resources to parliament.

The directly elected president's prerogatives are limited. Before a law goes into effect, the president may refer it to parliament for reconsideration, but he must promulgate the law if parliament passes it again by a simple majority.[147] The president designates a candidate for prime minister, and he appoints government heads on the basis of a vote of confidence from parliament.[148] After consulting the heads of both chambers, the president may dissolve parliament once a year if that body does not approve formation of the government within sixty days of a first request.[149] The president is the commander-in-chief, and, after consulting parliament, he can institute a popular referendum.[150]

With the exception of committing high treason, the president enjoys immunity from prosecution. He may be accused of high treason by a vote of at least two-thirds of all deputies and senators sitting in joint session. The case is then heard and decided by the supreme court of justice. The president is also constitutionally liable and can be suspended from office by a motion of one-third of the deputies and senators and, after consultation with the constitutional court, by a majority vote of the deputies and senators in a joint session. The removal of the president from office must be confirmed by a referendum organized thirty days after the decision to suspend.

The president designates a candidate for prime minister and appoints the government on the basis of a vote of confidence in parliament. When issues of foreign policy, national defense, and public order are discussed, the president may consult the government and chair its sessions. Presidential decrees on foreign policy, defense, domestic emergency policies, military nominations, and the awarding of decorations and honorary titles require the prime minis-

ter's countersignature. International treaties are negotiated by the government, signed by the president, and ratified by parliament.

In summary, despite several flaws the constitution set up a framework for the further development of democratic mechanisms in Romania. Whether this framework will be used to strengthen the communist legacy or to peel off the country's neocommunist label depends on the Romanians themselves.[151] In a September 25, 1992, interview preceding his electoral victory, President Iliescu said, "It is not up to others, but up to the Rumanian people to decide who is the best representative for them."[152] At least this seemed to be true.

Human Rights Practices As was the case of Bulgaria, the U.S. Department of State in its annual Report on Human Rights Practices stated that in Romania "respect for human rights continued to improve in 1992, particularly with regard to institutionalizing democratic principles and respect for human rights in Romania's legal system and the conduct of generally free and fair elections."[153] A consensus among observers[154] noted that since 1990 violence related to the election decreased and that during the 1992 campaign all major parties had access to the media.[155] According to the State Department's report, the press was "free of state censorship or interference and published a wide variety of opinions."[156]

The constitution prohibits censorship of any kind.[157] Thus, at least theoretically, Romanians can freely express almost any opinion they wish to. Still, careful observation reveals that this freedom has limits. For example, the constitution prohibits defaming the country,[158] a provision widely conceded as restricting criticism of the government.[159] On the other hand, some constitutional limitations of free expression are not observed in practice. Among other things, the constitution forbids provoking war, aggression, and ethnic, racial, class, or religious hatred.[160] However, the government tolerates a small but influential ultranationalist press that targets Jews, Hungarians, and Gypsies. The opposition also claims that its freedom of expression is curbed by government interference with the supply of printing materials.[161] Although the political races of 1992 exposed these irregularities, observers concluded that they did not seem to affect the election results.[162]

The 1992 campaigns also offered observers an opportunity to comment on freedom of assembly and rights of association, which are clearly guaranteed by the constitution.[163] During the parliamentary and presidential campaigns, the consensus was that both constitutional provisions and the more detailed regulations of the law on public assembly were respected at the many political rallies that were held. Some irregularities were noted, but only in Cluj in Transylvania where the nationalistic mayor forbade the Hungarian Demo-

cratic Union (UDMR) from holding a forum for the local administration and where he prohibited a meeting set to address the draft law on education. Both Romanian and international human rights groups have protested such acts, claiming that Funar violated the constitution and international agreements.[164]

The government generally did not interfere with the actions of human rights groups, which mushroomed in Romania following the revolution of 1989[165] and the country's ratification of international protocols and conventions on human rights protection. The Romanian constitution provides that international law takes precedence over national law, and article 20 specifically refers to international treaties dealing with human rights.[166] These provisions gave rise to several actions by Romanian human rights groups in the forums of international organizations. For example, the Hungarian Democratic Union of Romania (HDUR), which represents 1.6 million ethnic Hungarians, requested that the Council of Europe investigate the treatment of ethnic minorities before admitting Romania to membership.[167] The HDUR submitted to the council's secretary general a report listing their specific complaints, among which the constitution promotes assimilation and discrimination by stipulating that "Romania is a national unitary state where Romanian is the official language. . . ." Moreover, the HDUR asserted that Romania should agree to both the European Convention on Human Rights and the European Charter on Minorities Languages. The secretary general has shown some attention to HDUR concerns by stating that "Romania should continue to take steps in favor of human rights and the rights of ethnic minorities."[168]

In fact, much controversy occurred over Romania being granted full membership to the Council of Europe. In late September 1993 the government's application was conditionally approved by the parliamentary assembly. Specifically, concern was expressed at Romania being not "entirely democratic"; further, the justice system, freedom of the press, and the treatment of ethnic minorities have been widely criticized.[169]

Finally, on October 4, 1993, Romania became the twenty-third member of the Council of Europe despite questions regarding the country's human rights situation. Although the council recommended granting full membership, the parliamentary assembly demanded that the council monitor the guarantees made by Romania with regard to ethnic minority rights, freedom of the press, the independence of the judiciary, religious education, and the decriminalization of homosexuality.[170]

The other, widely discussed fundamental right is freedom of movement allowed by the Romanian government. The constitution permits virtually free travel within Romania, as well as the right to emigrate, to travel freely abroad, and to return.[171] No official restrictions on this freedom are imposed, ex-

cept in certain areas used for military purposes. Moreover, the U.S. State Department report of February 1993 confirmed that these rights are, in fact, respected.[172]

Freedom of movement, however, has caused some problems for the Romanian government. In September 1993 a bilateral agreement was signed by Romania and Germany that provides for the return of some 30,000 Romanians (mostly Gypsies) who had been denied asylum in Germany. The Romanian government confirmed the Gypsies' right to travel abroad, but it also admitted that returnees had troubles reintegrating and that authorities faced problems providing any sort of resettlement assistance to them.[173]

In 1991 Romania also signed the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol. The U.S. Department of State noted that the Romanian government had no plan, nor had it taken steps to implement the convention. Observers confirmed that refugees in Romania, while awaiting a determination of their status,[174] are living under inadequate conditions.

Most of the problems faced by the Romanian government concerning religious freedom stem from disputes over the restitution of assets to religious groups. Some 130 sects registered in Romania break down as Romanian Orthodox, 80 percent; Roman Catholic, 6 percent; Calvinist, Lutheran, Jewish, Baptist, 4 percent; other, 10 percent. Virtually all applications for registration are accepted, although the Mormons' application was pending for a longer period than others.[175] Since the 1989 revolution the government has turned over to the churches only a few pieces of property, but even these decisions gave rise to a major dispute over the rights to these assets between the Byzantine Rite Catholic church (Uniate) and the Romanian Orthodox church.[176]

Thus, the unquestionable desire and willingness to reform and improve the overall human rights situation exist in Romania. Still, in some regards the country's record on the protection of human rights is poor. As in other new democracies of this region, most problems arise from the treatment of ethnic minorities.

The U.S. Department of State estimates that twenty-two ethnic minority groups live in Romania, representing 10–12 percent of the population. The country's ethnic composition is Romanian, 89.1 percent; Hungarian, 7.8 percent; German, 1.5 percent; Ukrainian, Serb, Croat, Russian, Turk, Gypsy, 1.6 percent.[177] The International Human Rights Law Group considers the situation of ethnic Hungarians to be the "most politically contentious minority issue in Romania." Ethnic Hungarians have continually demanded rights to speak and be educated in their language, claiming they are deprived of control over their cultural autonomy.[178] At the beginning of 1995, tensions were still

frequent between local authorities in Hungary and Romania, and prospects for a Romanian-Hungarian treaty were uncertain. On May 23, 1995, the government introduced a draft law on minorities to the chamber of deputies; however, parliamentary debate on the question was postponed until future sessions.[179]

The hottest spot for discrimination against the Hungarians has been Cluj, where Funar systematically worked to deny them various rights and privileges. A delegation from the Helsinki Commission, sent to Romania in April 1993, expressed concern with the volatile situation there, which was described as "perhaps the most visible example of continuing tensions between ethnic groups."[180]

The Gypsies are another ethnic minority that continue to suffer discrimination, in the workplace, in the schools, and in mistreatment by police and ultranationalist groups. In 1991 a commission of the International Labor Organization (ILO) reported that Romanian Gypsies were subject to various forms of discrimination directly related to their lower status in society. Gypsies have the lowest-paying, lowest-status jobs, and they lack the same opportunities of other Romanian citizens for employment or academic advancement. Although the government has purportedly tried to remedy these problems, in June 1992 an ILO report stated that the situation "had not changed appreciably."[181]

As a result of the tendency to associate them with criminal social elements, all Gypsies have suffered numerous vigilante-style attacks.[182] In 1994, Amnesty International accused Romania of blatant violations of human rights because it had allowed three Gypsies to be lynched during racial violence in September 1993.[183] The human rights group wrote to President Iliescu and noted its concern with the violence against the Gypsy community as well as a lack of police protection.[184]

The Romanian record in human rights protections was carefully studied in 1993 in regard to the country's effort to regain most-favored-nation (MFN) trading status with the United States. Romania's MFN standing was unilaterally renounced in 1989 before the fall of Ceauşescu and was kept on hold by the U.S. Congress because of its human rights concerns.[185] In response to congressional concerns, in August 1993 the International Human Rights Law Group issued a report noting that, despite all of the problems mentioned, the human rights situation in Romania had "improved during the past year in several respects." The group recommended that in support of these advances, the United States should restore MFN status. As a result, in late October 1993, Congress finally approved such status despite concerns over the degree of President Iliescu's commitment to reform. MFN treatment was to be reviewed

yearly, and the U.S. president had to assure Congress that the Romanian government was observing human rights.[186]

In fact, despite the Romanian government's repeated declarations of its commitment to human rights, the 1995 Amnesty International report deeply embarrassed Romanian officials. The report confirmed that police torture and mistreatment of prisoners still existed, as did acts of police discrimination against minorities. How as of early 1996 the report will affect U.S. policy toward Romania is still difficult to predict.[187]

ALBANIA

The End of Political Isolation "Enver Hoxha, who ruled from 1945 to his death in 1985," wrote Kathleen Imbolz, "maintained one of the world's strictest and most isolated communist police states. He broke ties first with Yugoslavia, Albania's northern and eastern neighbor, and then, in 1960, with the Soviet Union, in each case claiming that they had diverged unacceptably from a Stalinist purity. From then until 1978 Albania maintained a political friendship only with the People's Republic of China. After breaking with China, Albania stood alone for more than ten years."[188]

When Ramiz Alia, Hoxha's successor as president and first secretary of the ruling Party of Labor (APL), assumed power, many people hoped that he would become "Albania's Gorbachev."[189] Instead, the situation remained essentially the same, as the personality cult established by Hoxha was still emphatically followed.

Late 1990 brought the first outright challenges to the communist regime. Initially, President Alia, acting in the role of "the reformer," announced that elections in March 1991 would be by secret ballot among a choice of candidates, but he refused to allow multiparty balloting. Then, on December 8, 1990, student protests erupted at Tirana University. The protests evolved into a pro-democracy movement, and on December 11 President Alia agreed to meet with the student leaders. As a result of this meeting and mounting demonstrations, Alia authorized the formation of opposition parties.[190]

As the first opposition party to form, the Democratic Party comprised students and intellectuals.[191] In addition, the period before the elections in the spring of 1991 saw the formation of the Republican Party, the Democratic Front, the environmentalist Greens, the pro-communist Agrarian Party, the Albanian Women's Committee, and the Greek-minority Omania organization.[192]

The first multiparty parliamentary elections since the communists assumed power in 1944 took place in two rounds, on March 31 and April 7,

1991. As predicted, the communists, acting under the pretense of reformers, proved victorious at the ballot box, receiving the vast majority of their support from rural areas.[193] The Democratic Party, on the other hand, received most of its support from the cities, including Tirana.[194] These elections resulted in a 250-member parliament, consisting of hard-liners and moderates, in which the communist APL held a greater than two-thirds majority of 168 seats.

A surprising election result was the upset of President Alia by Democratic Party candidate Frank Krrogi in Alia's campaign for a seat in parliament.[195] However, Alia's defeat did not spell the end of his political career. A new draft constitution, introduced by Alia and the APL just before the March 31 elections, stated that parliament could elect anyone to be president if the person "fulfills all conditions for being elected a deputy."[196] The draft constitution did not explicitly restrict the position to members of parliament.[197] Since the APL won a majority in parliament, it had enough strength to push through a temporary Law on Major Constitutional Provisions despite opposition resistance. After passing this legislation, parliament elected Alia as president.

As a result of unsuccessful attempts of several governments to cope with the political turmoil and grave economic problems, the next parliamentary elections were set for March 22, 1992. Although the Democratic Party won the elections, beating the socialists as predicted, they inherited a country in serious economic trouble, with hungry and unemployed masses, rising inflation, widespread crime, and a collapsed economy. The Democrats obtained control over 62 percent of the national assembly seats, giving Albania's parliament the largest democratic majority in Eastern Europe.[198] Democratic Party leader Sali Berisha was appointed by parliament as Albania's first noncommunist president. Much to the satisfaction of the Democrats, on April 4, 1992, Alia, the "last of the communist style dictators in Eastern Europe," resigned before parliament could remove him from office.[199]

As promised after the elections, Berisha has pursued economic reform by way of shock therapy. By strictly adhering to the reforms suggested by the IMF, he has been successful in creating 100,000 jobs in the private sector, increasing agriculture production by 20 percent, and reducing the inflation rate to zero in June 1993. Yet, despite these benefits, Albania is far from economic prosperity, and its people are not happy with the economic policy being pursued.[200] As in the other East-Central European new democracies, dissatisfied Albanians began turning to the former communist parties. The Albanian Socialist Party has continued to amass support, following its impressive showing in local elections in 1993 in which it won 54 percent of the vote compared to only 32 percent for the Democrats. The Socialist Party adopted a "social democratic" platform under which it supports a market

economy and multiparty democracy, albeit at the expense of a slower pace of economic transition and a temporary reopening of state-run factories to create jobs. Moreover, the Socialist Party leadership claimed that party members are the "country's true new democrats," and they accused Berisha's government of moving toward a dictatorship.[201]

The biggest clash between Berisha's Democratic Party and the former communists came as a result of the people's assembly vote of July 28, 1993, to lift the immunity of deputy Fatos Nano, former premier of Albania and the chairman of the Socialist Party. Nano's immunity was withdrawn so that he could be arrested for crimes committed while he was Albania's prime minister. Nano lashed out at Berisha and his Democratic Party government asserting that the "Socialist Party and genuine democracy will triumph in Albania."[202]

On July 30, 1993, after losing his immunity, Nano was arrested for abuses of power and falsification of official documents. In addition, eight former leading communists and four former lower-ranking officials were arrested, including former communist president Alia. In response, the opposition Socialist Party demanded release of its leader, Nano, claiming "he is the victim of a government with dictatorial tendencies."[203] Even foreign diplomats have taken issue with the arrests, suggesting that such a return to authoritarian methods could seriously impede reforms that Berisha has rigorously pursued.[204]

Constitution-Drafting The constitution-making process in Albania began in 1990 when a parliamentary commission assisted by an extraparliamentary expert group was formed to write a new constitution.[205] The first draft was completed in December 1990, and work on a second draft proceeded as the country moved toward spring 1991 elections.[206] The draft, dated March 1991, was submitted to Western commentators for evaluation,[207] and their analysis was forwarded to Albania at the end of September 1991.[208]

The disputes regarding the March 1991 draft focused on several key issues: separation of powers, regulation of economic activity, treatment of human rights protections, and status and functioning of the judiciary and constitutional court. The framework describing the basic philosophical concepts of the Albanian constitution is still not clear. The draft referred to Albania as an *état de droit*[209] "based on social justice, the protection of human rights and freedoms and on political pluralism."[210] However, the concept of *état de droit* in a classical version signifies the division of powers, the most venerated principle of Western constitutionalism. Contrarily, socialist constitutional jurisprudence usually rejected the doctrine as incompatible with the idea of

parliamentary supremacy. In fact, the division of powers was irreconcilable with the totalitarian leadership of the communist parties; as such, it could not be placed among the major principles of socialist constitutionalism. In contrast to some other constitutional drafts analyzed above, the Albanian draft still did not explicitly recognize this principle. It referred to the people's assembly as "the supreme organ of state power," whereas the council of ministers was not referred to as the "executive power" but, as in typical socialist constitutions, as "the supreme executive organ."[211]

The Albanian draft provided for typical provisions setting up the framework for a parliamentary system in which the legislative and executive branches of government were more or less fused, with the legislature being able to vote the executive out of office without any need for a national election. The Albanian people's assembly was to have an exclusive right to adopt and amend the constitution (the *pouvoir constituant*), to adopt statutes, and to elect the president and the council of ministers. Western experts commented:

> The vesting of primary government power in the legislature has been a hallmark for socialist regimes in Central and East Europe for many years under the Communist system. During that time, the legislatures acted primarily as a rubber stamp to Communist Party dictates and were not expected to carry out the full exercise of governance and policy making. Under a more democratic system the vesting of almost total power in the legislature is an invitation to authoritarianism and abuse of power. This threat can be prevented only by establishing in the constitutional framework a more evenly balanced distribution of powers between the executive, legislative and judicial branches.[212]

It was clearly the will of the drafters to leave the concept of ownership close to the socialist model. Although the draft provided that private property could be expropriated only for public needs and that the state did not have a monopoly over ownership, public ownership was still privileged. Land and underground resources were to be the property of the state, land being given only for "the use" of physical persons. Declarations of the marketization of the economy still were not included. In fact, the draft contained numerous references to "central planning" as a "mechanism of harmonization of national and local interests," reminiscent of the traditional rhetoric of Stalinist constitutions.[213] These provisions remained far apart from Western standards.

Of special concern to Western commentators were serious problems in human rights protection. The catalog of fundamental rights presented by the 1991 Albanian draft was relatively long; at first glance it looked impressive. Despite its being adopted only after suggestions were offered by Western experts, the draft provoked many reservations. The list of rights had a number

of features typical of communist constitutions. First, it still provided an elaborate roster of social and economic rights. As argued above, the inclination to give these rights a constitutional status went beyond the communist legacy and stemmed from the broader practice of several continental European states. Thus, socialist constitutionalism had not been criticized for mere constitutional coverage of social and economic rights, but for the purely declaratory or descriptive character of the protection offered by the socialist basic laws. Still, with all the deficiencies of constitutional enforcement mechanisms, the socialist state provided numerous social benefits to its citizens. The quality and enforceability of these services could be challenged, but their accessibility to the average citizen of a socialist state was unquestionable.

The broad coverage of social and economic rights in postsocialist constitutions generated more concerns than their presence in the basic laws of the Stalinist era. The economic blunders and inefficiencies of communism are well-known and require no further examination. However, state-controlled economies were in a position to distribute social benefits to an extent beyond the market economies. The experiences of wealthy European welfare states, such as Sweden, Belgium, France, or even Germany, proved this point. Great social expense was required to distribute what the communist regimes promised, but at least this policy was coherent with communist programmatic manifestoes. The relatively poor, new, market-oriented democracies could neither offer nor deliver these benefits.

Transplanting the social, economic, and cultural rights from the old socialist constitutions to the new basic laws of the postsocialist era appeared to contradict the clear intention of the state to support market mechanisms, rules of fair competition, and individual entrepreneurship. Several East-Central European states tried to change the language of their constitutions and replace declarations of "social and economic rights" with less-promissory general statements, providing instead that the state promote policies in favor of implementing these rights. This approach was more consistent with the availability of national resources in Albania, still the poorest country of Eastern Europe.

The second reservation dealt with the classification of fundamental rights and freedoms as those that were offered to all human beings regardless of their nationality and that were given only to the citizens of the state. While it was understandable that some social, economic, and cultural benefits were attached to membership of a society, and political rights were reserved for citizens who were entitled to participate directly or indirectly in governing the state, a number of civil liberties were available that an individual as a human being and not as a citizen could claim against the state. If a state intended to

meet some international standards of human rights protection, it should guarantee, for example, the right to life and dignity, liberty and personal security, equal protection, freedom from cruel and inhuman punishment, or rights in the criminal process to everybody, not only to its citizens. The Albanian catalog of rights granted most basic civil liberties only to citizens: "the right to be free and to enjoy personal security," "not to be discriminated [against] on the basis of sex, race, color, nationality, language, etc.," "to personal defense," "to freedom of conscience," or "freedom of thought and speech." As measured by international standards, this approach could hardly be recognized as satisfactory. Wording of the article that granted equal rights to women also was vague and confusing. The provision listed activities in which women were equal to men, giving the impression that in some other areas—for example, cultural activities—they were not equal. Third, some experts believed that a bill of rights should maintain a balance between constitutional guarantees and detailed regulation of individual activity by the implementing laws. Leaving extensive regulation of the boundaries of fundamental rights to regular laws, as with the Albanian draft, must trouble an American reader. Although this practice was not entirely inconsistent with the experience of some Western European countries, it seemed to undermine the constitutional status of such rights.

In sum, the Albanian draft still had general organizational and structural needs, insufficient clarity, and a socialist flavor. These shortcomings were expected to be corrected by the third draft, whose preparation was begun by a new commission headed by Deputy Minister of Justice Kristag Traja. The commission, which comprised members of all five parties represented in parliament—Democratic, Socialist, Social Democratic, Republican, and Human Rights—as well as judges and other experts, was expected to complete its work by the end of 1991.[214] In fact, however, on April 1991 the people's assembly moved to adopt an interim constitution, the Law on the Major Constitutional Provisions.[215]

The interim constitution still falls far short of Western standards, and, similar to the March 1991 draft, it has a number of inconsistencies. Article 3 recognizes the principle of the division of powers; in a way typical of socialist constitutionalism, however, the constitution continually refers to the people's assembly and the president as "the Supreme Organs of the State Power" and to the government as "the Supreme Organ of State Administration."[216] This language seems to suggest that the executive and the legislature are not "the powers," but rather organs of "a unified" and therefore "not divided" power.

The interim constitution increased the president's power, but left his pre-

rogatives vague and his relations with parliament unclear. The president was granted the right to appoint the chairman of the council of ministers, accept his resignation, and, between sessions of the assembly, the right to appoint and discharge members of government.[217] But the interim constitution also provided that the council of ministers is controlled by the people's assembly and that the president's appointments are subject to the assembly's approval.[218] The president is also allowed to ask the people's assembly to reexamine a law it has passed and to dissolve the parliament. The reasons for this right to dissolve the parliament are unclear, as the president is allowed to act if the assembly's "composition does not allow the performance of the functions of the Assembly itself and makes impossible the country's running."[219]

The council of ministers is described as "the highest executive and legislative organ." Performing their executive functions, the ministers may issue decisions, ordinances, and instructions. Similar acts issued by the president require the countersignature of the chairman of the council of ministers or the proper minister. The interim constitution does not specify the council of ministers' legislative functions.

The council of ministers comprises the chairman, vice chairmen, ministers, and others as defined by law. Ministers respond collegially for acts of the council and individually for acts of their institutions. The council has the powers to direct activity for domestic and foreign policy; issue declarations, ordinances, and instructions in compliance with the constitution; coordinate and monitor activities of local organs of administration; adopt measures on security; reach international agreements; devise economic and social plans; decide on the division or unification of administrative territorial units; adopt measures to ensure the protection of the environment; and invalidate the illegitimate acts of the ministries and other central organs of state administration.

Parties may be freely formed in Albania. To submit a national list, they must register candidates in thirty-three districts in nine regions of the country. The state contributes set amounts to party campaigns. Some 50 percent of the state's contribution is granted in proportion to the number of nationwide voters received by the party in the last election, while the other 50 percent is divided among the parties proportionate to the number of candidates registered.

Deputies of the 250-member people's assembly are elected for four-year terms by a two-tier system. The lower tier consists of one hundred single-member districts. Deputies are elected by a majority vote in multiple rounds. The upper tier consists of one nationwide, multimember supplemental district in which seats are allocated according to proportional representation.

Franchise laws guarantee electoral rights to all citizens at least eighteen

years old, disqualifying those convicted of a crime and those declared mentally incompetent by a court. Citizens twenty-one years of age are eligible to be nominated as candidates for election if they live permanently in Albania or, alternatively, declare that they will live in the country permanently after the election. Nomination requires four hundred signatures from the district in which the candidate runs. The parliament meets no fewer than four times per year, and sessions convene on the decisions of its presidency, or as requested by the president of the republic, the council of ministers, or by one-fourth of all deputies.

In addition to its controlling functions over the government and central agencies of the state, the People's Assembly defines the main direction of the internal and foreign policy of the state; adopts, amends, and interprets the constitution; approves economic programs and the state budget; ratifies and denounces political and military treaties, agreements that affect the delineation of borders, and fundamental human rights and duties of citizens; and decides those areas that have financial repercussions for the state. The assembly also grants amnesty and decides on referendums, wars, and states of emergency. It elects and discharges the president of the republic. Additionally, the parliament elects, appoints, and discharges the attorney general and his substitutes.

Deputies enjoy immunity. They cannot be controlled, detained, arrested, or penally prosecuted without the assembly's consent. Deputies may be detained when they commit a grave crime. Deputies may not be held legally responsible for actions and stands adopted while performing their duties as deputies.

Meetings of the people's assembly are convened twice per year by the presidium, which consists of the chairman and two deputy chairmen. The chairman in early 1995 was Pjeter Arbnori; Shaqir Vukaj and Tomarr Malasi were elected as deputy chairmen.

The People's Assembly elects from among its ranks permanent and temporary commissions. The permanent commissions examine draft laws and control the legality of the executive acts of the president and ministers, while the temporary commissions are created for certain questions submitted to the assembly.

Legislative initiative lies with the president, the council of ministers, every deputy, and groups of at least 20,000 citizens with voting rights. Laws and other acts of the assembly are deemed adopted when voted on by a majority of the deputies in attendance, with at least one-third of the total assembly membership required to be present. Constitutional laws, which require the vote of

a qualified majority of two-thirds of all deputies, are declared in the official gazette no later than fifteen days after their adoption.

The interim constitution recognized the state's tendency to develop market mechanisms, but it used ambiguous language that likely will discourage foreign investment. It provides that "the country's economy is based on the diversity of ownership, free initiative of all economic subjects," but it also states that the economy is regulated by the state and that "economic initiative of juridical and physical persons cannot develop contrary to social interest and should not impair the security, freedom and dignity of man."[220] The drafters of the constitution, apparently responding to concerns of Western commentators that Albanian law still favors the state's property, tried to omit the following language from the March 1991 draft: "the land and underground resources are the ownership of the state." Still, the drafters left a great deal of room for incorporating the same principle by means of the implementing laws. The constitution provides that "all kinds of ownership are equally defended by law," but in a typically ambiguous way it also states that "the assets which are of the state property are set by law."[221]

A year from the adoption of the interim constitution, in April 1992, the people's assembly amended the Law on the Major Constitutional Provisions, adding the chapter on the judiciary and the constitutional court. The drafters adopted the German model of a "mixed," concrete, and abstract review,[222] which can be triggered by the highest executive officials, a group of one-fifth of deputies, local courts, and local governments, or by any person claiming a violation of fundamental constitutional rights. The court can initiate the review also on its own motion.[223] The court also has the broad power to interpret the constitution and the laws and to investigate the legality of elections and charges against the president. It has jurisdiction over competency disputes between the constitutional powers and the right to review the constitutional status of political parties and other political and social organizations. The court seems to have only suspensory power with regard to the laws, but its decisions with normative acts at the substatutory level are final. Nevertheless, the court apparently tries to assert more power and actively intervenes in the legislative policy of the people's assembly.[224]

Throughout 1992–93 the Albanian constitutional commission wrestled to improve many defects in the first drafts, but little progress was made toward completing a draft document. In 1994, constitution-making was more promising, and the draft favored by President Berisha was published. However, it drew much criticism from opposition parties, which attacked its authoritarian features.[225] After failing to generate a two-thirds parliamentary majority, the

draft was rejected in a popular referendum on November 6, 1994. Further embarrassing Berisha, more than three months later the constitutional court ruled (no.3/1995) that submitting the constitution to a popular vote without first asking parliament to vote violated the Law on Major Constitutional Provisions.[226] Fewer than two months after the referendum, another draft was produced by the opposition working group composed of members of the Socialist Party, the Party of the Democratic Alliance, the Social Democratic Party, and the Party for the Protection of Human Rights. Published in February 1995, the draft was immediately attacked by Berisha. He claimed that the drafting process violated art. 44 of the interim constitution, which stated that the draft of the new constitution "will be worked out by the special commission charged by the People's Assembly."[227] It was promptly announced that the constitutional commission soon would start negotiating a new draft, but as of the spring of 1996 the process was at a standstill.

Human Rights Practices In March 1993 when the Constitutional commission failed to introduce to the people's assembly a new constitutional draft, it decided to submit a bill of rights, which, to the surprise of some commentators, was passed by a qualified majority of parliament.[228] On paper, the charter of rights looks even more elaborate than its predecessor. The catalog of rights is long, the number of "everyone's freedoms" was expanded, freedoms are not contingent on the performance of duties, and they can be restricted only by law and only for reasons precisely enumerated in the constitution. Only the ambiguity of some criteria allow for infringement of human rights, such as "protection of morals" or "prevention of the disclosure of information received in confidence," still might pave the way for abuses of free expression and information. Aside from this drawback, the charter looks impressive. It is the actual Albanian record in human rights protection that generates more concern.

During the period when Albania was ruled by the communists, it was considered the site of probably the worst human rights abuses in Europe. After communism's downfall in 1990, Albania moved away from its isolationism and sought to reform itself.[229] The 1991 Law on Major Constitutional Provisions[230] guaranteed the right of citizens to change their government "by free, general, direct and secret ballot." It also provided for political pluralism. Further, it required that political parties be completely independent from state institutions and not be ethnically or religiously based. These provisions were put to the test in the March 1992 parliamentary elections, which were viewed as generally free and fair by most international observers.[231] After joining the International Covenant on Civil and Political Rights in October

1991, the government attempted to prove its respect for the covenant's basic freedoms of expression and assembly. It gave all parties access to mass media[232] and allowed rallies to be held by the opposition parties.[233] Although no major irregularities were noted, the socialist leaders complained that some of their meetings were broken up by opponents. The 1992 elections resulted in the first anticommunist takeover since 1944.

As promised after the elections, the new government submitted a bill that proposed to bar all "Fascist, racist, anti-national, Marxist-Leninist, Enverist [followers of former dictator Enver Hoxha] and Stalinist" parties. It was passed by the new parliament in July 1992.[234]

Generally, international observers in 1993 showed much concern over an increase in the number of human rights violations committed by the police in Albania. In October 1993, Amnesty International compiled a report based on media information and testimony of witnesses and victims of police violence. The report primarily focused on incidents, occurring in 1993, that involved the police using violence to break up demonstrations by supporters of the Socialist Party or demonstrations by people protesting against the government. Amnesty claimed that the police have used "excessive force in controlling and detaining demonstrators and failed to discriminate between violent and nonviolent demonstrators or protestors."[235] Moreover, even though major changes have occurred in Albania since 1990, AI fears that human rights violations by police are still officially accepted in some circumstances and that imprisonment of prisoners of conscience is still taking place.[236] The situation did not change in 1994, although a U.S. Department of State observer noted that "police continue to beat detainees, sometimes causing death."

Of special concern to Western observers were serious problems in the treatment of ethnic minorities. The approximate ethnic composition of Albania is Albanian, 90 percent; Greeks, 8 percent;[237] Vlachs, Serbs, Gypsies, Bulgarians, 2 percent.[238] Ethnic Greeks, by far the largest and most organized minority group, receive the most attention and support from abroad. In 1992–93 tensions between the ethnic Greek minority and Albanians continued to escalate, with both sides accusing the other of ill-treatment and violations of human rights.[239]

One of the areas of conflict became the election law, which was passed in February 1992 and basically prevented ethnically based parties from participating in the elections. The Greek minority viewed this law as directed toward Omonia, the political and cultural organization of the ethnic Greek minority that won five seats in parliament in the 1991 elections.[240] Omonia protested against the 1992 law both locally and abroad, but it was not allowed to participate in the elections. In response, Omonia leaders created the Unity for Hu-

man Rights Party, which was approved by the government and was successful in fielding candidates in the ethnic Greek areas of southern Albania.[241]

Albanians, in turn, were outraged by the treatment of the Albanian minority group in Greece. In July 1993 the Democratic Party of Albania, the Social Democratic Party of Albania, and the Democratic Alliance of Albania denounced "the shameful acts of the maltreatment, beating, torturing, violent plundering and massive expulsion of Albanian emigrants in Greece," claiming that such acts are "not spontaneous, but made in the course of expulsions ordered time and again for the Albanian emigrants."[242]

In late October 1993, after several violent border clashes between Greeks and Albanians, Greece summoned its ambassador home for consultations. Albania had hoped that under the new government of Premier Andreas Papandreou relations between Greece and Albania would improve. Papandreou, however, stated that "good relations depend on Tirana's treatment of its Greek minority."[243]

The conflict between the Albanians and the Greek minority also has a religious background. In 1990 the Albanian government legalized both the private and public practice of religion, and with that both churches and mosques were reopened. The 1991 Law stipulated that Albania is a "secular state" that "observes the freedom of religious belief and creates conditions to exercise it."[244] Although the freedom of religion seemed to have been established in both theory and in practice, concern has been shown over the extent of the government's role in religious and church affairs.[245] This concern stemmed from the government's refusal to agree to the appointment of three bishops of Greek origin. The government reportedly acted in response to public opinion, which supported only ethnic Albanians being appointed to such a position, even if they were not qualified to take it.[246]

Thus, with all progress noted in the protection of human rights, Albania still is one of the most volatile regions in East-Southern Europe. In July 1993 Albanian Prime Minister Aleksandr Meksi assured the CSCE high commissioner for national minorities that Albania, as a CSCE member, is "committed to observe and implement all the principles of the charters and other documents of CSCE when it is about national minorities."[247] In January 1994, following the commissioner's suggestion, the government created a special office for minority affairs. However, it is too early to estimate how this decision will affect the situation of minorities in Albania.[248]

Chairman of the CSCE Steny H. Hoyer summarized the situation in Albania in 1991, a summation that seemed to hold true even in 1995: "This is only the beginning. The question is where Albania will go from here. While the path to

multi-party elections was not an easy one for Albania, the road ahead poses even greater challenges."[249]

The Avant-Garde Comes Late

POLAND

Peaceful Revolution In 1985, General Wojciech Jaruzelski resigned as prime minister, although he remained the first secretary of the Polish United Workers' Party. After the party-controlled elections in 1985, he was replaced by Zbigniew Messner. Messner's successive attempts to cure Poland's collapsing economy totally failed, and, as a result of a new tide of labor unrest in 1988, Messner resigned. The party then turned the government over to Mieczyslaw Rakowski, who announced his support for the concept of political pluralism and declared his readiness to hold discussions with the opposition.

Roundtable negotiations began on February 6, 1989, and culminated on April 5. Ernest Skalski, a prominent Polish journalist and one of the editors of Solidarity's new daily *Gazeta Wyborcza* (Electoral Gazette), reported:

> First of all, despite the shape of the table, the negotiations were really a bilateral affair between the authorities and the opposition represented by Solidarity. There were three primary discussion "subtables," concerned with politics, economics and the trade union question. These dealt with issues ranging from mass media accessibility, the independence of the judiciary and local self-rule to the creation of a new government body and the office of President. The proceedings at the subtables were reported in the press and on television, with the authorities' delegates underlining how much was accomplished and the similarities in the objectives of both sides. Indeed, the government needed to appear conciliatory; it wanted to give an impression that it is gaining the support of the challengers and that an entente is round the corner.[250]

The main discussions took place in an isolated government building in *Magdalenka,* near Warsaw, where Lech Wałęsa and his closest advisers met with the chief of the governmental delegation, Interior Minister Czesław Kiszczak.[251] After several successive deadlocks, a breakthrough occurred when the regime's negotiators offered a real novelty: the establishment of a senate, or second chamber, in the Polish parliament that would be chosen by means of a truly democratic election in which the party coalition would compete with the opposition for all seats. Before the government had time to reconsider the consequences of such a proposal, it was accepted by Bronisław

Gieremek, one of the opposition delegation leaders. The deal was made. "The opposition agreed to political pluralism in exchange for being permitted to participate in elections. This pluralism meant the renewed legalization of Solidarity, Rural Solidarity, and the rebellious independent Students' Association, with the possibility of reviving various other organizations dissolved by authorities after the imposition of martial law. The regime also promised further liberalization of censorship and some independence for the judiciary—both to a degree that was difficult to determine.[252] It was decided that the provisions of the roundtable accords should be incorporated in the constitution in a way that would reflect Poland's democratic traditions.

Adopted in great haste shortly after the accords were concluded, the constitutional changes provided that the national assembly would consist of two chambers: the Seym (or diet) and the senate. The Seym, composed of 460 seats, remained the supreme legislative body. Electoral liberty for Seym elections was limited. The opposition could freely nominate candidates for 35 percent of the legislative mandates, and placement on the ballot required 3,000 voter signatures from any given province.[253] Three-fifths of legislative mandates were to belong to the coalition of the communists (the Polish United Workers' Party) and its satellite parties (Democratic Association and United Peasants' Party); 5 percent of the mandates were allocated to pro-communist Catholic groups.

Elections for the senate were subject to no limitations. The senate was composed of one hundred representatives, two from each of the forty-seven national voivodships and six from the two combined largest agglomerations, Warsaw and Katowice.[254] To claim mandates in the Seym or the senate, the candidates had to receive more than half of all valid votes; otherwise, a new round of elections would be held. The new senate was given legislative initiative and the right to review legislation passed by the Seym. Any changes introduced by the senate to laws passed by the Seym could be overruled by a two-thirds vote in the Seym, with at least one-half of all deputes present.[255] It was resolved that the senate would participate on an equal footing with the Seym in modifying and adopting the constitution.

The constitutional amendments also provided for the office of the president. The new law provided that the president would be elected for six years by a joint session of the national assembly (the Seym and the senate).[256] The president had legislative initiative and signed laws. His refusal to sign a statute might be overridden by a two-thirds vote of the Seym in the presence of at least half of its members.[257] The president was given the power to proclaim martial law for three months in the case of serious danger to the state or a natural catastrophe. He could dissolve the Seym when the legislature failed to

adopt a budget or a long-term economic plan or when the legislature took steps that would encroach on the president's constitutional prerogatives.[258] The independence of the judiciary was safeguarded by the national judicial council, composed of judges delegated by the general assembly of the supreme court, the high administrative court, and the district courts.

Elections for the Polish parliament in June 1989 gave Solidarity clear dominance in the new, freely elected senate where the union captured ninety-nine of one hundred seats. Solidarity also won 35 percent, or 161, of the seats open to opposition candidates in the Seym. The communists and their allies suffered a crushing rejection by voters in the first round. All but two of thirty-five communist officials who ran unopposed on a "National List"—including eight members of the politburo—failed to win 50 percent of the votes necessary to claim seats allocated to them. Some 295 of 299 seats left by the accords to the communists' allies had to be filled in the second round of elections. On the morning after the vote, General Jaruzelski admitted to his top aides, "Our defeat is total. A political solution will have to be found."[259]

Although Jaruzelski was elected the Polish president, his government, led by General Kiszczak, could not form a viable coalition. Wałęsa's negotiations with two minor parties resulted in a Solidarity-led coalition. On August 24, 1989, Tadeusz Mazowiecki, an editor of Solidarity's weekly newsletter, *Tygodnik Solidarność,* was made the new premier of Poland, and on September 12, 1989, the Seym confirmed the coalition government's cabinet. Four ministerial positions (agriculture, justice, environment, and health) were awarded to the United Farmers Party; the commerce and technical development positions were allocated to the Democratic Association; and the positions of defense, interior, transport, and foreign trade minister were assigned to the Polish United Workers' Party. Solidarity took over major economic ministries: communications, labor, central planning, country planning and building, industry, finance, culture and art, education, and foreign affairs. Poland's peaceful revolution was a reality.

Political Compromise The Hungarian and Polish retreats from communism contrasted in that the transition to democracy in Hungary took place in unfettered electoral competition, while the transition in Poland resulted from an important political compromise.[260] At the moment when Polish Solidarity sat down to their roundtable negotiations with communist government officials in April 1989, the idea of free elections in Eastern Europe was inconceivable.[261] The compromise reached in the spring of 1989 provided for the opposition's participation in the upcoming vote in exchange for 35 percent of the seats in the Seym and free election to the senate. The newly created

presidency remained in the hands of the communists. The Hungarian opposition capitalized on the Polish experience and refused to enter into elections under the communist umbrella.[262]

Solidarity, legalized once more, and its electoral success in June 1989 confronted Poland's first postwar noncommunist prime minister, Tadeusz Mazowiecki, with the communist president, General Wojciech Jaruzelski, elected by both chambers in which seats were still occupied by disputably legitimate representatives.[263] In April and December 1989 the constitution was redrafted to include provisions guaranteeing a number of civil liberties, establishing free elections, and removing the Communist Party from its leading role in state affairs. Still, the adoption of a brand-new constitution by the parliament carrying a postcommunist stigma seemed to be unacceptable.

"In Hungary, by contrast," wrote Laszlo Bruszt and David Stark, "the transformation of political structures has been so rapid and comprehensive that its party system seems to whirl like a finely calibrated and well-oiled machine."[264] When the Hungarian communists began to regain their respectability, Poland was starting its so-called witch hunt for communists who still occupied important governmental and parliamentary posts. Paradoxically, Poles, like Hungarians, began to look back with some sentiment to the communist policy of full employment and centralized governmental control as opposed to the uncertainties and hardships of a market economy. Furthermore, Poles showed increasing impatience that the end of communism had failed to bring immediate prosperity, and they began blaming the government for "not settling accounts" with former party members living opulently and obstructing the reforms. Andrzej Mania explained,

> In result, if someone in the government has had connection with the communist party in the past, no matter how small the connection or how young this person was, he will have a negative aura of untrustworthiness instilled upon him by other members of government. These people claim that a person with a communist background may not in fact know what the proper interests of the country should be. For example, during the formation of the parliament a dilemma arose when it was necessary to find seats for each of the party's representatives. No one wanted to sit next to the communist party representatives out of fear that this would show that their party is not too different from the communists since they sit so close.[265]

Neither the elevation of Lech Wałęsa to president in new direct elections at the end of 1990 nor the parliamentary elections in October 1991 solved the constitutional impasse. Being a result of a political compromise, the amended constitution created checks and balances that ceased to work in a changing political environment. The roundtable agreements, which were to guarantee

some amount of control for the communists, were a major departure from the parliamentary system toward a presidential model.[266] The president was granted the right to veto and legislative initiative, the right to dissolve the parliament, and the right to impose martial law.

The direct election of Wałęsa as the first noncommunist president deprived the presidential model of its former rationale and strengthened the sentiment to restore a parliamentary system. The opinion, however, that depriving the Solidarity president of the same prerogatives enjoyed by his communist predecessor would be embarrassing gave steam to the idea of balancing the president's power by further "democratization" of parliament. Using the system of strict proportionality and disregarding the usual 5 percent threshold that kept weaker parties out, Poles elected representatives of no fewer than twenty-nine parties to the parliament; no single party received more than 13 percent of the vote.[267]

The excessive system of checking and balancing contributed to governmental impotence. President Wałęsa, abandoned by his former political allies, lost his backing in parliament. Communications between both legislative chambers and the government also became strained. Wiktor Osiatyński wrote, "When, however, President Wałęsa tried to use his prerogatives, his power proved to be illusive. The Seym . . . could not rule itself but could block the work of the Government through obstructing the legislative procedure. The President, despite the huge power, could not rule himself either but could restrain the Government and the Parliament."[268]

The opening ceremonies of Poland's first democratically elected parliament were upset by the month-long failure of parliament and the president to agree on a new prime minister.[269] The protracted negotiations between major parties, such as the Democratic Union Party headed by Mazowiecki, the Liberal Democratic Congress of Jan Krzysztof Bielecki (the second noncommunist prime minister), and the center-right Center Alliance most closely associated with Wałęsa, were unsuccessful, ending with the rejection of Wałęsa's first choice for prime minister, former Solidarity adviser Bronislaw Geremek. Finally, in late December the coalition government of Jan Olszewski, supported by, among others, the Center Alliance, the Christian National Union, and several peasant parties, was confirmed by parliament.[270] According to expectations, this government, based on a large coalition, was from the beginning incapacitated by bitter factional struggles and unable to complete the constitution-making process.

Economic Shock Therapy As in the case of Hungary, economic hardships diverted the attention of the Poles from constitutional reform. Advised by

Western experts, led by Harvard University's Jeffrey Sachs, the Polish government subscribed to the strategy of a one-shot jump toward a market economy. The Polish economic reform has been based on three major kinds of measures: liberalization, stabilization, and privatization. Sachs wrote:

> Economic liberalization means introducing market competition and creating a legal framework for private property and privately owned business. Stabilization fosters a climate in which enterprise of any kind can survive. It involves limiting budget deficits, reducing the growth of the money supply and establishing a realistic, uniform currency exchange rate to promote stable prices and foreign trade. Privatization, certainly the trickiest area of reform, transfers existing state property, such as factories, to the private sector.[271]

In January 1990 the architect of Poland's unprecedented transformation from a centrally planned to a market economy, Deputy Prime Minister and Minister of Finance Leszek Balcerowicz announced that, to provide a foundation for future liberalization, stabilization, and privatization, the Polish government had to pursue a program of significant economic austerity. To keep inflation under control and make the currency convertible, the government introduced a tight money policy and removed most price controls. The results were remarkable in terms of macroeconomic stabilization. The budget shifted from a deficit of 7.4 percent of the GNP in 1989 to a surplus of 3.8 percent in 1990. The reform eliminated persistent shortages and lines at Polish stores. Inflation dropped, and thanks to the new convertibility of the Polish currency and the favorable exchange rate after devaluation, Polish exports to the West surged from around $8.5 billion in 1989 to $11.5 billion in 1990.[272]

The surveys clearly indicate a significant growth of Western investment intentions in Poland. The size of the population as a perceived market, a decent communication system, relatively good roads, ethnic and religious homogeneity, access to the Baltic Sea, and location on the channel between Germany and Russia make Poland attractive for Western business.[273] The number of Polish-Western joint ventures grew along with the number of small private corporations.[274]

The service sector was booming. Sachs reported, "between December 1989 and June 1991, individuals started 460,000 businesses, operating mostly in services, and the payrolls of all small private firms grew by an estimated 860,000 workers."[275] Still, privatization of large enterprises, the third pillar of the reform, did not move forward rapidly enough, resulting in significant shrinking of the industrial sector and declining budget revenues in 1991.[276] The government had to cut back some social services and cap wages and benefits in the state sector. The state budget also suffered from cuts in subsi-

dized sales of Soviet petroleum. Unemployment rose to 11 percent, inflation to 70 percent, and real incomes dropped more than 30 percent from January 1990 to the end of 1991. Inflation again dropped to 41 percent in 1992, but it was still higher than in Hungary (27 percent) and Czechoslovakia (17 percent).[277] The significant influx of inexpensive Western agricultural products served a major blow to the Polish agricultural sector. Scattered strikes and public criticism of the government's austerity measures were generated.[278] After months of indecision whether to continue the Polish shock therapy, President Wałęsa replaced Prime Minister Olszewski with Hanna Suchocka, a specialist in constitutional and parliamentary law.[279]

The Interim Constitution Work on a new constitutional draft was advanced but still far from completion.[280] After amending the 1952 constitution in 1989, separate constitutional committees were formed in parliament's two chambers to draft versions of a brand-new charter.[281] The conflicts between the two committees, which resulted in breaking off all contacts with one another, stemmed mostly from discussions of the Polish preferences for a parliamentary or a presidential system.[282] The applicability of either model to Polish geopolitical circumstances generated much emotion.

The Seym constitutional committee, chaired by Geremek, prepared a draft whose aim was to reconcile these conflicting preferences.[283] Released in September 1991, the draft borrowed heavily from the German model of "chancellor's democracy." The president's role was conceived as that of a senior statesman, but the center of power was shifted to the prime minister and his cabinet.[284] The senate's committee, chaired by Alicja Grześkowiak, put forward two drafts, the first in April 1991, the second after new parliamentary elections in October 1991. Both drafts favored a presidential form of government and vested the president with full cabinet appointment power.[285] As new developments have rendered these drafts outdated and reduced their significance to the merely historical, they warrant no further in-depth analysis here.[286]

In the spring of 1992 the issue that generated the most heated discussion was the procedure for adoption of a new constitution.[287] In accordance with the bill passed by the Seym, a new constitutional committee was to be composed of forty-six members of the Seym and ten members of the senate. Constitutional initiative was granted to parliament's constitutional committee, to any group of forty-six deputies in the Seym, and to the president. The constitution was to be adopted by a two-thirds majority of the national assembly—the Seym and the senate combined—and subject to ratification by popular referendum. The bill met with opposition from both president and senate.

President Wałęsa wanted the committee to include representatives of the government, the supreme court, and the constitutional tribunal whom the bill had given only observer status. The senate introduced amendments that proposed to increase the ratio of senators to deputies on the constitutional commission, and it suggested that the constitution be adopted in the national assembly by a 55 percent majority rather than by two-thirds. The senate amendments were invalidated by a vote of two-thirds of the Seym, which confirmed that the constitution would be drafted, adopted, and ratified according to the Seym's bill.[288]

In the meantime, the extraordinary commission of the Seym worked on the act, "The Constitutional Statute on Appointing and Dismissing the Government and Other Changes Regarding the Highest State Organs," submitted to the Seym by President Wałęsa.[289] In response to this proposal, the Democratic Union, the largest parliamentary party, prepared and submitted to the Seym in February 1992 a draft of the interim constitution. The draft, called The Constitutional Act on Mutual Relations between Legislative and Executive Powers of the Polish Republic, or the Small Constitution, focused on checks and balances between parliament, the president, and the government, leaving other issues for the new constitution to regulate.[290]

In comparison to the amended constitution of 1952, newly activated, the draft of the Small Constitution[291] proposed several major changes.[292] First, the 1952 constitution provided that on the president's motion the Seym would appoint and recall the prime minister. The Small Constitution, however, suggested that the president should designate the prime minister and members of the cabinet, who then would need parliamentary approval. The procedure for designating the government is elaborate and cunning. Refusing to approve the presidential candidate for prime minister by an absolute majority gives the Seym the opportunity to designate a successive candidate by the same margin. If a majority of the Seym then fails to agree on a candidate, the president once again would designate a prime minister, who this time would need only a plurality's approval. If approval fails once again, in the next round the Seym may elect its candidate by a plurality of votes cast. However, should parliament's candidate fail to win the required support, the president can either dissolve parliament or appoint a provisional government for six months.[293] Second, the Small Constitution introduced the "constructive vote of no confidence," which provides that in dismissing the prime minister the Seym must simultaneously designate a successor by an absolute majority.[294] Third, the constitution significantly increased the cabinet's power; the prime minister was made directly responsible to the Seym, and the president was stripped of the power to ask parliament for the cabinet's dismissal. On the other hand, the

interim basis gave the president and prime minister joint power to replace ministers without the Seym's consent. In contrast to the 1952 constitution, the Small Constitution allowed the cabinet to ask the Seym for permission to legislate by decree. Fourth, the amended 1952 constitution provided that a separate statute would determine which presidential acts needed the prime minister's countersignature. The new constitution provided a list of actions, such as calling parliamentary elections, dissolving parliament, vetoing parliament's legislature, appointing judges, all of which needed no countersignature from anyone. In other actions the president must cooperate with the cabinet. The president has important checks with veto power on the Seym, which can be overridden by a two-thirds majority. In contrast, should the president attempt to bypass the Seym by referendum, senate cooperation is required.[295]

The Small Constitution was widely praised as the result of a clever compromise that could be recognized as a "success of the Polish democracy."[296] It also has been attacked by the Center Alliance and the Movement for the Republic, headed by former Prime Minister Jan Olszewski, which claimed the interim constitution gave preference to the presidential system.[297]

Despite the opposition of these two parties, the Seym on August 1, 1992, adopted the draft by a two-thirds majority.[298] The draft was submitted to the senate, which returned a heavily amended version. For final adoption, the interim Small Constitution again needed the vote of a two-thirds majority of the Seym to override senate opposition.[299]

The Seym's voting procedure over senate amendments aroused a major controversy. The Seym's procedural rules provided initially that its members should vote on the amendments twice, once to reject, and the second time to accept, if the amendment had not been voted down. In both instances, a majority of two-thirds was required to decide the amendment's future. However, this procedure may result in a legislative deadlock. If one-half of the Seym deputies vote against the amendment, it is not rejected since a two-thirds majority is required. If, however, the other deputies support the amendment, it also will not be accepted because of the required two-thirds. (The amendment is neither rejected nor accepted as is the whole act, a constitution, or a regular statue, which has been subject to the amendment process.) This scenario causes a clear legislative impasse.

The rules of procedure were changed in July 1992 when it was decided that the Seym would vote only once. A two-thirds majority is needed to reject the senate's amendments, but when they are not rejected, they are automatically adopted. This procedure greatly increased the senate's role because the support of one-third of the Seym's deputies would be sufficient to adopt the senate's amendments. Confronted with the heavily amended version of the

Small Constitution, in October 1992 the Seym decided to change the rules of procedure again. The new procedure distinguishes between regular statutes and constitutional acts. With regular statues, the Seym votes twice, with a two-thirds majority needed to reject the senate's amendments and a plurality required to accept them. The possibility of a deadlock was decreased but not eliminated. In the case of constitutional amendments, it was decided that the Seym should vote only once. A qualified majority of two-thirds of the vote is necessary to adopt the amendment, but if the amendment is not adopted it is automatically rejected. The senate's role was reduced since one-third plus one of Seym deputies voting against adoption of the senate's constitutional amendment would be enough to override the senate's action.

The decision to change procedural rules was challenged in the constitutional tribunal that delayed the Small Constitution's adoption process by one month.[300] In mid-November, the constitutional tribunal ruled in favor of the Seym's action, and on November 17, 1992, President Wałęsa signed a new interim Polish constitution.

Although the Small Constitution was published with constitutional provisions that continued in force,[301] the president planned to supplement it quickly with a new bill of rights. In December 1992 the Helsinki Foundation for Human Rights in Warsaw prepared a draft of a charter that was to complement the interim constitution.[302] The extraordinary commission of the Polish parliament was called to review the draft, but its work progressed slowly, and as of April 1993 the commission had approved only five of the charter's forty-nine articles.[303] This initiative, as well as other amendments to the Small Constitution proposed by President Wałęsa, have been hampered by the dissolution of parliament, which resulted from the government's failure to win a vote of no-confidence in May 1993. The new elections held on September 19, 1993, brought to power the former communist Democratic Left Alliance, along with its political partner, the Polish Peasant Party.[304]

The cabinet of Waldemar Pawlak survived until February 20, 1995, and, amid the struggle for presidential approval of Poland's 1995 budget and under President Wałęsa's threat to force parliament's dissolution, it was voted down by the Seym on March 1, 1995, and replaced by a new cabinet led by Józef Oleksy. The new prime minister, a former communist official and more recently a Speaker of the Seym, promised further privatization and acceleration of economic and constitutional reform. The nomination resulted in ongoing clashes between the government and the president over interpreting the interim constitution.[305] In fact, in January after Jozef Oleksy's election, Wojciech Roszkowski, director of the Institute of Political Studies of the Polish Academy of Sciences, said, "Wałęsa is definitely playing with the law, but it cannot

be argued that he has done anything really, really wrong. I think we are paying the price now for the uncertain compromises that were made early on [in forming a democracy]. . . . We've had seven drafts and still it is unlikely that we will have a Constitution anytime soon."[306]

Amid budgetary struggles and facing threats by the president of its early dissolution, the Polish Seym moved to amend the constitution.[308] In prompt action on January 20, 1995, a draft amendment, prepared by the labor union, reached parliament and was sent to the legislative commission. It provided that a dissolved parliament, although deprived of the power to amend or change the constitution, the electoral law, or the budget, would remain in session until a new legislative assembly convened. The amendment was passed by the national assembly. On February 6 it was vetoed by Wałęsa, who also tried to force the legislative commission to strike down the dissolved parliament's right to impeach the president. After his presidential veto was overruled, Wałęsa signed an amendment on March 24.[308]

During the same period in January 1995, the Polish constitutional commission published the first five chapters of a Uniform Draft of the Constitution of the Republic of Poland. The draft dropped all provisions of the constitutional preamble, confirmed a bicameral structure for the legislative body, and clarified the president's role as being only "the guarantor of the continuity of executive power," not "the head of the executive branch."[309]

In the second half of 1995 the drafters' attention again was diverted from constitutional work and centered on the forthcoming presidential campaign. In a close vote, Aleksander Kwaśniewski, a minister in the last communist Polish government and leader of the Social Democratic Party which had been assembled from remnants of communist organizations in 1990, took the presidency from Wałęsa. Although the newly elected president renounced his party membership and promised to cooperate with all political groups, including the Catholic Church, his victory was uniformly commented on as the final proof of the communists' return to power in East-Central Europe.[310] "Economic development and political stability of our country," Kwaśniewski said in his inaugural address, "constitute a credible basis and a mandate for Poland's accession to the European Union and NATO." However, it remains to be seen whether political stability also would mean adopting a long-expected new constitution.

Human Rights Practices Poland recognized relatively early the need for nongovernmental oversight of the human rights situation. The Polish model of administrative and judicial review was established by Statutes on the Supreme Administrative Court of January 31, 1980, and on the constitutional tribunal

of April 29, 1985.[311] Adopting an Austrian "centralized and abstract" model, the Polish Seym granted the tribunal a limited right of constitutional review that could be activated either by petitioning the highest political and judicial officials of the state, by the Seym committees, by groups of at least fifty deputies, by local authorities, or indirectly by the inquiries of the regular courts. The tribunal has been vested with the right to issue final decisions invalidating "substatutory acts" (orders, ordinances, and instructions) and suspensory decisions concerning the "statutory acts" (statutes or decrees) that could be overruled by a qualified two-thirds majority of one-half or more of the deputies voting.[312]

Furthermore, Poland in 1987 created an office of ombudsman, a non-governmental, independent body that investigates alleged violations of civic rights and liberties. Actions taken by the ombudsman include investigation of public complaints and the presentation of governmental acts and decrees that allegedly were in violation of human rights to the constitutional tribunal. Moreover, both the Helsinki Commission and the senate office of intervention examine public grievances and complaints. The government also places no restraints on international human rights organizations that wish to visit Poland. In October 1992, Poland ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms.[313] Effective in May 1993, Poland's membership in the European convention allowed persons claiming human rights violations to appeal to the European Commission for Human Rights.[314]

In April 1994 the Sejm ratified two protocols attached to the European Convention for the Protection of Human Rights and Fundamental Freedoms: one on property rights and the other on the right of parents to bring up children in compliance with their religious and philosophical beliefs.[315]

Religiously and ethnically, Poland is more homogeneous than the other East-Central European new democracies.[316] Yet, despite the fact that Polish minorities are few, they face different forms of social prejudice. This problem, however, has been recognized, and since 1993 the Polish government has attempted to ameliorate the conditions of ethnic minorities.[317] For example, Poland in 1992 signed bilateral treaties with both Germany and Belarus, providing national minorities the right "to cultivate their national identities." Also, even though Poland is predominantly Roman Catholic, minority religions such as Eastern Orthodox, Ukrainian Catholic, Protestant, Jewish, and Muslim, were able to practice without government interference or restrictions. In June 1994 the Seym passed a resolution postponing debate on the concordat with the Vatican. The concordat was signed by the government in 1993, but its ratification has been set aside until the adoption of a new consti-

tution. In 1994 the Polish parliament also passed legislation that formally guaranteed Protestant churches in Poland the same level of protection as that accorded to Catholic and Orthodox churches. U.S. Department of State reporters, observed that "the Protestants now have the same opportunity to claim restitution of property lost during the communist era and benefit from the same tax reduction as that granted to the Orthodox and Catholic churches. This law covers only church property seized by the People's Republic of Poland and consequently does not address either the issue of private property or Jewish religious property seized during World War II."[318]

Several reports of discrimination, however, have been made against minority religious groups; for example, groups have complained that in a failing enterprise it is less likely that a Catholic would be dismissed than a member of a minority religion.[319] Compulsory courses in religion and ethics no longer exist; instead, the ministry of education has issued a directive that requires a student or his or her parents to choose either a course in religion or ethics or neither. This directive also provides for using public money to pay religion teachers, allows religious symbols to be placed in schools, and allows prayer before and after class.[320]

Political and due process rights are basically respected in Poland. Incidents of police brutality or degrading treatment declined significantly since the defeat of communism, and no allegations of torture were reported.[321] Politically, Poland is a multiparty democracy, and respect for the right of its citizens to change the government was well-confirmed in the last several elections.

U.S. Department of State observers noted no major irregularities in regard to civil liberties. The constitution provides for freedom of assembly and freedom of association.[322] Basically, people are permitted to assemble, either formally or informally, peacefully and nonviolently, and to protest against the government. For public meetings a permit is not required. The organizers, however, must apply to local authorities for a permit, and for larger meetings they must notify the police. If a permit is not obtained, usually the authorities will not interfere, as long as the gathering is peaceful. Government approval must be obtained for private associations to hold meetings. Government approval in these situations is almost always granted.[323]

The constitution provides for freedom of speech and freedom of the press,[324] and these rights generally "exist in practice."[325] For the most part, Poles are free to express their opinions in public, although someone can be incarcerated under the current penal code for insulting a state body.[326] Art. 270 of the penal code states that anyone who "publicly insults, ridicules, and derides the Polish nation, Polish People's Republic, its political system, or its organs is punishable by between six months and eight years of imprison-

ment." If an individual commits such acts in print or through the mass media, he may be imprisoned for ten years. In August and October 1992 this provision of the code was invoked and resulted in suspended sentences for the parties found guilty. In October 1994 neofascist activist Bolesław Tejkowski was convicted and was sentenced to one year in prison for insulting Polish authorities, the Jewish minority, the pope, and Polish bishops; the sentence was suspended. As a result of a heated debate over these cases, in 1994 the speaker of the Seym, Józef Oleksy, moved to amend these sections to bring the code into compliance with the European Convention for the Protection of Human Rights.[327]

Newspapers are considered to be "independent, uncensored and politically diverse," and no restrictions are imposed on creating a private newspaper other than the usual need for financial backing and public interest and demand.[328] In December 1992 the Seym passed a new broadcast law which, among other things, would end the state's monopoly over the broadcast media, establish a process for issuing broadcast licenses, and require public broadcasters to "respect the religious feelings of the audience and in particular honor the Christian system of values."[329] With regard to this part of the act, U.S. organizations have called on the Polish government to abolish the references to "Christian values" as it "could force journalists into self-censorship."[330]

Despite arguments that the term "Christian values" is not clearly defined by the law, the constitutional court in March 1994 declared that "there was no contradiction between broadcasting law regulations, which prescribe respect for the Christian system of values in particular, and regulations concerning the pluralism of the public media and freedom of speech."[331] In its verdict, the tribunal stated that respect for Christian values did not mean their propagation.[332]

Several significant changes have occurred in the right to freedom of movement. First, Polish citizens wishing to travel abroad can obtain passports. Also, no longer registration is required each time Polish citizens and legal permanent residents change their residence. Poland has framed its policy on emigration in accordance with the European Community, focusing primarily on stopping illegal passage into neighboring countries, especially Germany. In 1992, Poland was basically a way station for those seeking to settle farther west. Therefore, fewer than fifty people applied for asylum in 1992, a sharp decline from 2,236 applications in 1991.[333] Poland has abolished most of its visa requirements for countries in Europe, including neighboring East European countries and the former Soviet republics.

In summary, Poland's record in human rights protection greatly improved

during the first years of its independent and democratic existence. The U.S. State Department in its annual report to Congress on human rights practices noted that violations of those rights that were typical of the communist era "were an exception in 1992."[334]

THE REPUBLIC OF CZECHS AND SLOVAKS

Retreat from Communism The process of the East-Central European countries' retreat from communism has striking similarities in that the new democracies' reform programs have been based on several commonly recognized priorities, such as those incorporated under the terms democratization, resocialization, and marketization.

Democratization means the radical transformation of the constitutional system through the replacement of totalitarian or quasi-totalitarian mechanisms with a legal framework in which the supreme power is truly vested in the people and directly or indirectly exercised by them.

Resocialization is conceived as society's real and dramatic recovery from the ethical crisis caused by the former socialist government's double standard of morality, widespread corruption, forced labor, disrespect for social values, unaccountability of decision-makers, rewarded incompetence, etc.

Marketization means a fundamental structural economic change signified by massive privatization, price liberalization, the introduction of internal exchange convertibility, a certain amount of competition, and elimination of most governmental subsidies.

In some countries, the remarkable similarities in projecting major social, economic, and political goals are overshadowed by specific local problems, among which the importance of ethnic controversies dominates. In Czechoslovakia, for instance, postglasnost constitutional developments unfold their characteristic features only when analyzed in the context of the country's particular ethnic problems. Katarina Mathernova wrote,

> People often view the Czech and Slovak Federative Republic (CSFR), Hungary and Poland jointly as being countries of the former Eastern bloc most likely to achieve democratic political and market economic reform. The recent constitutional developments of these three countries do possess some similar traits—all three have striven to reinstate the rule of law, create new democratic structures, protect fundamental rights and freedoms, create a system of reliable checks and balances, and introduce a genuine judicial review. It is important to realize, however, that despite these similarities, the current constitutional debate in Czechoslovakia is fundamentally different from the debate in the other countries. The most fundamental difference is that Czechoslovakia

is not ethnically homogeneous, while both Hungary and Poland are more or less ethnically homogeneous societies.[335]

The dissolution of communist power in Czechoslovakia began at the end of 1989 with mass pro-reform protests in Prague and other cities, formation of the opposition group "Civic Forum," and the speedy resignation of Communist Party General Secretary Milos Jakes and the thirteen-member politburo.[336] The initial stages of the anticommunist retreat looked so smooth that the Western commentators, following Timothy Garton Ash, named the Czech revolution "gentle" or "velvet."[337] Tony Judt wrote that "in contrast with its Polish and Hungarian neighbors, Czechoslovakia in 1989 had undergone no gradual political liberalization, no partial economic reform."[338] But Czechoslovakia also did not incur the massive debts to Western banks that were expected to cripple its neighbors like Hungary and Poland; in contrast, Czechoslovakia was entering the era of democracy with the reputation of a "specialist supplier within the East European common market."[339] Moreover, Czechoslovakia had a communist leadership well-aware of the inevitable collapse of their world and ready to learn from the Polish and Hungarian experiences.

After President Gustáv Husák's resignation, a new "coalition government of national understanding" was sworn in.[340] The main objectives of this interim government, under the direction of Prime Minister Marian Čalfa, were, first, to lead the country to its first free elections since 1948, to be held in June 1990, and, second, to revive the stagnant economy.

The first signs of hope for reform in Czechoslovakia came with the election of Alexander Dubček as chairman of the federal assembly on December 28, 1989,[341] and with the election on day later of Václav Havel as president.[342] Dubček had been out of the political scene since 1968 when his attempt to introduce reform to Czechoslovakia had been crushed by the Soviets. Havel, who had been jailed several times for his subversive views and controversial plays, had never intended to run for political office. Havel and the Civic Forum, however, had been gaining respect and support from the Czech people, who were desperately in need of reliable political leadership. As the first noncommunist president of Czechoslovakia since 1948, Havel was unanimously elected by all 323 predominantly communist assembly members.[343]

In April 1990 the federal assembly in Czechoslovakia adopted a new name, the Czech and Slovak Federal Republic. The heated debate between Czech and Slovak representatives over the initially proposed names "Czechoslovak Republic," "Republic of Czechoslovakia," or "Czecho-slovak Republic" was a clear symptom of the two major nationalities' deep divisions.[344]

The first postwar free elections took place in June 1990. They were based on the electoral law that limited the parties seeking election to those able to show proof of either 10,000 members or 10,000 signatories, further limiting the parties represented in the federal assembly to those that could secure at least 5 percent of the popular vote.[345] The turnout was overwhelming, with 96 percent of 11.2 million eligible voters casting ballots.[346] Dominant were the Czech group, Civic Forum, and its Slovak counterpart, Public Against Violence. Together, these parties received 46.3 percent of the national vote and secured 170 seats in the new 300-member bicameral parliament.[347] Reelected as president, Havel asked Čalfa to form a new government.[348]

On assuming office, Havel and Čalfa faced massive economic and social problems that the people expected them to resolve during their two-year terms.[349] Between February and June 1990 the Czechoslovak assembly passed some sixty laws intended to end monopolies and price controls and to establish the right to free enterprise.[350] After the election, the government managed to follow with several important economic regulations dealing with privatization, restitution, foreign exchange, banking, and foreign investment.[351] These laws were expected to start the transformation from a communist to a free-market economy. As in other new European democracies, the new laws also led to social tension, unemployment, and strikes.[352] The economic slowdown hit the Slovak Republic much harder than the Czech Republic. The reports showed that Slovakia suffered from four major disabilities:

> First, for strategic reasons 80 percent of Czechoslovakia's arms industry was located in the Slovak Republic. The program of military conversion has, therefore hit Slovakia far harder than the Czech Republic. Second, most of the civilian industry in Slovakia is based on the processing of raw materials which are utilized by domestic industry. Thus Slovakia has only limited means of exporting directly and is in fact responsible for only 20 percent of the federation's total exports. Third, agriculture accounts for a major portion of the republic's GDP, and the crisis in Czechoslovak agriculture has thus hit Slovakia much harder that the Czech Republic. Fourth, because of its proximity to the former states of the CMEA, Slovakia was highly dependent on direct and transit trade with those states. The collapse of that trade has also hit Slovakia harder than the Czech Republic which borders on Austria and Germany.[353]

These problems exacerbated the political tensions between the two federation members.

The Breakdown of the Constitutional Process The major target of Havel's 1990–92 presidential term was constitutional reform, which was widely expected to create a firm legal background for an economic transformation. Af-

ter the beginning of the Czechoslovak revolution in November 1989, several amendments were passed to purge the constitution of 1960 of its Stalinist legacy.[354] Similar to those of Poland and Hungary, the new Czechoslovak constitutional amendments eliminated provisions on the leading role of the Communist Party and modified the role of an interim parliament and president.[355]

One year later, in November and December 1990, parliament succeeded in passing a number of piecemeal amendments to the constitution, most notably the bill of rights and freedoms, as well as an act dividing competencies between the two republics.[356] In March 1991 the assembly adopted an act on the constitutional court, and in July 1991 another act on the judiciary.[357] Further attempts to advance works on a new constitution, however, brought even more frustration and disappointment than had the economic reform.

The balance of political powers in the federal assembly clearly resulted in a failure of the constitutional process. Although the Czech Civic Forum and the Slovak Public Against Violence won the 1990 elections, neither secured the three-fifths support necessary to push through constitutional changes. Czechoslovakia had a bicameral parliament (federal assembly), composed of a 150-member House of the People and a 150-member House of the Nations. Following the 1968 federation amendment, which introduced "the prohibition of majoritarian rule," the Czech and Slovak representatives in the House of the Nations voted separately.[358] As Katarina Mathernova observes, "these voting procedures result in a *de facto* creation of a three chamber Federal Assembly consisting of the Chamber of People and the Czech and the Slovak parts of the Chamber of Nations."[359] A bill is approved only if it is passed by a majority of the total number of the representatives of each republic. Constitutional acts and amendments, the declaration of war, and the election of the president require a three-fifths majority of the deputies of each house.[360] In practice, this means that thirty-eight votes of either the Czech or Slovak part of the House of the Nations can block any ordinary law and thirty-one votes in either part can block constitutional acts and amendments.[361]

After the June 1990 elections the winning parties in both republics had suffered from internal factional wars, splitting into rival groups. In February 1991 the Civic Forum, which had been the strongest party in the Czech region, split into three: the center-right Civic Democratic Party, whose leader was Finance Minister Václav Klaus; the center-left Civic Movement, led by Foreign Minister Jiří Dienstbier; and the small center-right Civic Democratic Alliance, supported by the federal economic minister, Vladimir Dlouhy.[362] Public Against Violence had split into two factions, those who supported the ousted Slovakia Prime Minister Vladimir Merciar and those who did not. Merciar, the former communist and an outspoken supporter of greater au-

tonomy for the Slovak Republic, was forced out of office in a power struggle in 1991 amid allegations that he had worked for years as a secret police informer.[363] Merciar was replaced by the Christian Democratic leader Jan Carnogurský, who opted for keeping the federation together but who also wanted much greater autonomy for his republic. Being in opposition to Carnogurský, Merciar joined a rival party, the Movement for Democratic Slovakia.

The fractionalization of the political movements doomed chances for further constitutional development at the federal level. At the beginning of 1992 the federal assembly considered the possibility of adopting an interim constitution, fashioned after the Polish Small Constitution. The law was intended to comprise three chapters of a federal constitution regulating the relations between the president, federal parliament, and federal government.[364] However, the bill failed to pass, as did President Havel's proposals for ratification of the new federal constitution by the Czech and Slovak national councils, the proposed amendment to the referendum law that would allow the president to initiate a referendum with the consent of the federal government instead of the federal parliament, and the amendment that would permit the president to dissolve parliament when two chambers were unable to agree on a draft bill.[365]

On the level of the republics, the Slovak national council submitted its draft constitution of the Slovak Republic for public discussion.[366] The basic text of the draft, which had been worked out from the coordinated proposals and positions of the political parties and the political movements, provided for a unicameral parliament, the Slovak national council, and for numerous alternative solutions suitable either for an independent republic or an autonomous republic envisaged as a component of "the joint state."

The Velvet Divorce of Czechs and Slovaks With the country headed into the 1992 elections, the dissolution of the federation—after seventy-four years—became of foremost importance. Whereas in the 1990 elections the choices boiled down to "anybody but the communists," in 1992 the voters were deciding on the country's future existence. Election results in the two republics were exactly opposite.[367] In the Czech Republic the Civic Democratic Party (CDP) led by Václav Klaus won the most votes; Klaus basically advocated a speedy transformation to a free market and the maintenance of a common state.[368] The CDP won 33 percent of the ballots to the federal assembly and 30 percent to the Czech national council.[369] In Slovakia, on the other hand, the Movement for a Democratic Slovakia (MDS), led by Meciar, who advocates slowing down the reform process and independence for Slovakia, won the most votes. The MDS secured 34 percent of the vote to the federal assembly and 37 percent to the Slovak national council.[370]

With the election campaign taking on a highly ideological tone, the emphasis shifted from preparing a constitution to the accelerated process of the federation's disintegration. In the summer of 1992, Czech and Slovak leaders worked out an agreement in which on January 1, 1993, the country would split into two separate and independent states with two currencies and constitutions.[371] This agreement, which allowed for a peaceful separation of the two republics and a gradually reduced federal role, was the only structure on which Czechs and Slovaks could agree.[372]

The issue of the country's future determined the tone of the presidential elections. These elections in early July 1992 resulted in the parliament, led by Slovak deputies, rejecting Havel's reelection. Although Havel was the only candidate in the first round of voting, he was barred from the next round, which was scheduled for later in July. Havel was entitled to remain in office until October 5, 1992, if parliament could not appoint a successor. He resigned, however, in response to the Slovak parliament's declaration of the sovereignty of Slovakia on July 17, 1992.[373] Taking another step closer to separation, the Slovak parliament approved a draft constitution on September 1, 1992, providing for dissolution of the federation, with the two republics cooperating only on custom issues and monetary matters.[374] On December 16, 1992, the Czech national council also adopted a new constitutional law.[375] By January 1, 1993, the velvet divorce of the Czechs and Slovaks became an accomplished fact.

After the Split Because of the small size of both republics and their joint governance for more than seventy years, the first year of independence was economically difficult. Both Czechs and Slovaks faced rising inflation, rising unemployment, lower productivity, and lower standards of living. The divorce did not clean the political atmosphere, either.

After the split, both republics committed themselves to cooperate and maintain close relations;[376] they also proclaimed their new roles as independent, Western-looking nations. On January 1, 1993, the Czech chamber of deputies promulgated the Declaration of the Czech National Council to the Parliaments and Nations of the World. The declaration stated that the new Czech Republic had adopted the treaties that were binding on Czechoslovakia as of December 31, 1992, and that it was taking over the relationship of the former Czechoslovakia with the European Community.[377] A similar declaration was issued by the Slovak minister of foreign affairs, Milan Knazko, who stated that Slovakia would seek to "orient itself toward European structures."[378]

Both countries also held presidential elections. In the Czech republic, Havel was again called to the presidency.[379] It was widely commented, how-

ever, that his second term would be much different from his first in that he might be overshadowed by a powerful and popular premier, Klaus.

In Slovakia, Prime Minister Meciar, on assuming his position as the new leader of an independent state, immediately warned the opposition that he would not tolerate any "deviation from the binding norms of political life," and he required the opposition to prove its loyalty to the new republic by swearing allegiance to the new constitution.[380] Meciar's tough statements seemed to confirm his will to dominate Slovakia's political life. It also was expected that in this state the personality of the chief of government would significantly affect the president's new powers. In late January 1993 the Slovak parliament held two rounds of voting in presidential elections, which resulted in the elevation of Michal Kovac, the former head of the Czechoslovak parliament, to the presidency. He won a total of 106 votes.[381] Many hoped that the appointment of Kovac, who was widely praised for his diplomatic skills and called "master behind the scenes,"[382] would stabilize the Slovak two-party coalition and help establish a dialogue between Meciar and the opposition. However, after disagreements over economic policy, the cooperation between the two ruling parties, Movement for a Democratic Slovakia and the Slovak national party, broke down, and Meciar's party began seeking a potential coalition partner.

The Constitutions Compared The constitutions of both countries show remarkable similarities and few important differences. Both are of moderate length with short preambles and lengthy lists of rights and freedoms. In the Czech Republic the Charter of Fundamental Rights and Freedoms was enacted before the constitution and is referred to as "a part of the constitutional order."[383] Both constitutions describe the republics as "sovereign, unified, and democratic law-governed states" but, while, the Czech constitution focuses on the description of the state and the distribution of powers, the Slovak constitution is more elaborate with respect to the economic system, which is described as a "socially and ecologically oriented market economy."

Both constitutions provide for a parliamentary system with the presidents as heads of state and the prime ministers as heads of governments. The composition of the parliaments in both countries is different. Slovakia's constitution provides for a one-chamber legislature, the national council, composed of 150 members elected for four-year terms. The Czech basic law establishes a bicameral parliament, with a 200-member chamber of deputies, elected for four years, and a senate of eighty-one members, elected for staggered six-year terms.

The presidents of both republics are elected for five years by a majority of

three-fifths of the single-chamber Slovak parliament, and an absolute majority of the Czech two-chamber parliament. Besides ceremonial and representative functions, the presidents have some legislative and executive duties, including the right to be present at parliamentary meetings and the right to return laws for consideration. They lack the right to veto laws, and their refusal to sign laws may be overruled by majorities of deputies present in the Slovak National Council and of all deputies in the Czech Chamber of Deputies. It means that in the Czech Republic the initial legislative phase requires the vote of a simple majority of the deputies present with a quorum of one-third deputies; the second vote requires, however, a majority of all deputies. For example, with a quorum of sixty-seven deputies, at least thirty-four votes of Czech deputies are required to pass a bill. A bill returned by the president is deemed adopted if it is affirmed in a second vote by at least 101 deputies.

A similar right to reject bills, granted by the constitution to the Czech senate, may be also overruled by a second vote of the chamber of deputies.

The Slovak president's powers to dissolve parliament are more limited than those of the Czech president. The Slovak president may dismiss the national council only if it fails to approve the government's programmatic statement three times during the six months following elections. The president must first hear from the chairman as to why the council will not vote affirmatively, and, then, new elections must be called within thirty days. Conversely, the president of the Czech Republic can dissolve the chamber of deputies in four instances: (1) if the chamber does not pass a vote of confidence in a newly appointed government whose chairman was proposed by the chairman of the chamber; (2) if the chamber does not decide on a government-sponsored bill, to which the government attached the question of confidence, within three months; (3) if the chamber is adjourned for a period longer than 120 days in one year; (4) if the chamber has not had a quorum for more than three months. The chamber cannot be dissolved in the three months before the end of its term.

The presidents appoint and recall the prime ministers and other members of the government. The appointees, however, are accountable to parliament and have to receive its approval within thirty days after the appointment. The appointees can be also voted down by a majority of Slovak and Czech deputies. In both countries the members of the government seem to be detached from the legislature, although this principle is not clearly pronounced in the Czech constitution.[384]

In both republics, the government comprises the prime minister and ministers, who are accountable to their respective parliaments. In contrast to its Czech counterpart, the Slovak constitution makes the office of minister in-

compatible with the mandate of a deputy. Czech basic law is more vague and provides only that a member of government may not engage in activities conflicting with the execution of his office. The description of these activities is left to separate law.

The commentators observed that the lack of clear distinction between functions which the Slovak president performs himself and those he exercises in cooperation with the government contributed to conflicts between Prime Minister Meciar and President Kovac.[385] The right of the president to recall ministers and heads of important state authorities, to participate in meetings of the government, and to request reports from its members, all confused observers debating the degree of direct presidential involvement in governmental operations. The problem became specially sensitive when Prime Minister Meciar demanded presidential dismissal of foreign minister Milan Knazko. Although Knazko was dismissed by President Kovac, the problem was submitted to the constitutional court, which ruled that the president was not obliged to follow the prime minister's request.[386] The struggles between president and prime minister resulted in an unsuccessful attempt to recall the president by the parliament, which brought eighty votes in favor of the no-confidence motion, forty against and thirty abstentions. Although the motion did not receive the necessary majority of three-fifths required by the Slovak constitution to recall the president, the action proved the fragility of the political system of the newly created republic.

In both countries, members of their parliaments are elected for four-year terms. In Slovakia National Council deputies are elected in four multimember districts, with the number of seats in each district based on population. Representation is calculated on the basis of a proportional system according to the Hare method, which provides that to be elected, a deputy needs to receive a "one" quota of votes (quota = votes/seats). To introduce its representatives to the national council, a party must win more than 5 percent of the ballots.

In the Czech Republic the chamber of deputies consists of two hundred deputies elected by a two-tier system. In the lower tier, elections are held in eight multimember districts, with seats allocated pursuant to proportional representation based on a Droop Quota system. According to this system, a candidate must reach one quota (quota = votes/seats + 1) to be elected. The upper tier is composed of one nationwide, multimember district with seats allocated pursuant to proportional representation.

As of early 1995 the party positions in the Czech Republic's chamber of deputies are as follows: Civic Democratic Party, 76 seats; Left Bloc (including the Communist Party of Bohemia and Moravia), 35; Czechoslovak Social Democratic Party, 16; Liberal Social Union, 16: Christian Demo-

cratic Union/Czechoslovak People's Party, 15; Association for the Republic/Czechoslovak Republican Party, 14; Civic Democratic Alliance, 14; and Movement for Autonomous Democracy/Society for Moravia and Silesia, 14.

The senate has remained at the center of constitutional controversies in the Czech Republic. Although the idea of amending the constitution to eliminate bicameralism has been repeatedly rejected by the chamber of deputies, the senate still had not been elected as of the end of 1995. Its functions have been taken over by the legislative chamber, and elections are expected to occur by late autumn of 1994.

Several arguments seemed to be used in support of bicameralism in East-Central Europe. Second chambers were expected to represent group or corporate interests, to become a filter that could guarantee the quality of legislation against an inclination toward a speedy adoption of laws by main legislative chambers, and to be responsible for adoption of private law when main chambers focused on public law acts. More cynical critics of bicameralism claimed that the idea is supported only by senators who do not want to lose their positions. The Czech example shows clearly that most of the objections raised against second chambers are justifiable; local or professional interests are better represented by pressure groups or trade unions, the public suffers more from a sluggishness of legislative processes than from an overly hasty adoption of laws, and the costs of maintaining bicameral bodies are higher than their benefits. The old slogan that "second chambers are either unnecessary or antidemocratic" proved true in the practice of most nonfederal East-Central European states.[387]

In the Slovak Republic the elections called on September 30 and October 1, 1994, showed again that Meciar had strong popular support. The Coalition of the Movement for a Democratic Slovakia and the Slovak Peasant's Party gained 34.96 percent of the vote and 61 seats; the Common Choice coalition of the Party of the Democratic Left, the Social Democratic Party of Slovakia, the Greens, and the Farmer's Movement received 10.41 percent (17 seats); the Hungarian Coalition received 10.18 percent (17 seats); the Christian Democratic Movement, 10.08 percent (17 seats); the Democratic Union, 8.57 percent (15 seats); the Workers' Association of Slovakia, 7.34 percent (13 seats); and the Slovak National Party, 5.4 percent (9 seats). Ten parties failed to receive the required 5 percent of votes cast.

The national council in Slovakia meets at least twice each year in spring and autumn. Sessions, as a rule, are public. The council may adjourn its session by resolution for no longer than four months in one year. The first session of the Czech parliament starts no later than the thirtieth day after the election. Sessions can be interrupted by a resolution, but the recess may not

exceed 120 days per year. Joint meetings of the chambers are going to be governed by rules of procedure established by the chamber of deputies.

The parliaments of both republics have the right to address an interpellation to the government or its members on matters within either body's jurisdiction, and members must reply within thirty days.[388]

The legislative processes of the two republics are fairly similar. The rules of procedure in the Slovak national council are provided by act No. 44/1989. Bills may be submitted by the government, by deputies, and by committees. Resolutions are effective only if approved by more than half of the deputies present. Approval is required of at least a three-fifths majority of all deputies to amend the constitution and to pass constitutional laws, elect and recall the president, and declare war. The council has a quorum if more than half of all deputies are present. Council laws are signed by the chairman of the council, the president, and the prime minister. The president may return a law for reconsideration.

Discussion of a proposed law or regulation is introduced by a "proposer" (from the government or the national council); a member (a spokesperson for the proposal) then presents actions of the committees concerned with the measure. The chairman opens the discussion, in which members take part in order of their requests to be heard. Members may submit proposed amendments. During the entire process, the rules of procedure permit the introduction of "factual notes," not to be longer than three minutes. Council and government leaders are allowed to speak whenever they request. After discussion, the original proposer is again given the floor. At that point, the council may approve either public or secret voting.

In the Czech Republic the law on rules of procedures was originally adopted before the split in 1989. It was amended in 1990, 1991, and substantially by law no. 42 in 1993. Work on the new law is pending.

Bills are submitted to the chamber of deputies by the senate, the government, a representative body of a higher self-administrative unit, a deputy, or a group of deputies. The government has the right to express an opinion on all bills; if it does not do so within thirty days, the bill is considered supported. The government may link a vote on a government-sponsored bill with a vote of confidence and request discussion within three months of its submission. A system of three readings, proposed by a new draft of the rules of procedure, is to replace the system of a single reading. Bills after the initial discussion of principles of the draft laws, are sent to the committees. Committee reporting at the plenary session is followed by discussion, during which deputies may propose amendments, and then by voting.

A bill approved by the chamber of deputies is submitted to the senate,

which must discuss it and pass a resolution within thirty days. The senate may either approve, reject, or return the bill to the deputies, or, alternatively, it can express an intent not to deal with it, in which case the bill is deemed adopted. To be passed, a bill rejected by the senate must be approved, again by a majority of all deputies. If the senate returns a bill with proposals for amendment, deputies will vote on the new version, and the bill is adopted by their resolution; if the deputies do not approve the new version, and the previous version is reaffirmed by a majority of all deputies, it is adopted in its original form.

When the chamber of deputies is dissolved, its legislative functions are taken over by the senate. The government alone may propose adoption of a legal measure to the senate. Such proposals may not concern the constitution, the state budget, the electoral law, or international treaties regarding fundamental human rights and freedoms. Laws adopted by the senate and signed, as required, by the president, the prime minister, and the chairman of the senate must be approved by the newly elected chamber of deputies at its first session.

To a greater degree than the Czech basic law, the Slovak constitution employs the mechanisms of direct democracy, reserving a separate subchapter for the referendum, which is to be used to decide "important issues of public interest" and particularly to confirm "a constitutional law on entering into an alliance with other states or on withdrawing from that alliance."[389] The referendum is called by the republic's president if requested by a petition signed by a minimum of 350,000 citizens, or on the basis of a national council resolution. Results of the referendum are valid if more than 50 percent of eligible voters participate in it and if decisions are endorsed by an absolute majority of participants.

More detailed regulations on the court structure have been left to separate enactments. The Czech Republic has a separate network of administrative courts, while in the Slovak Republic the challenges against the validity of the decisions of central and local administrative bodies are reserved to the constitutional court.[390] Judicial review of the constitutionality of law is guaranteed by both constitutions, which clearly adhere to the Austrian model of enforcement. They vest the right to review in a central constitutional court, which is described as an independent "judicial body charged with protecting constitutionality."[391] In both countries the constitutional courts are institutions of final review from whose decisions no legal recourse can take place.

The Slovak constitution gives the constitutional court[392] vast jurisdiction to decide on the constitutionality of laws, governmental decrees, administrative acts, and jurisdictional disputes among central and local agencies; to

review individual complaints on the decisions of state administrative bodies violating basic rights and liberties of citizens; to verify the results of elections; and to serve as a court of state on high treason charges filed by the republic's national council against the president. The court initiates proceedings based on a proposal of at least one-fifth of national council deputies, the president, the government, the ordinary courts, the general prosecutor, and individual petitioners who claim violation of their constitutional rights.

The Czech constitutional court's jurisdiction[393] is less clearly explained in the Czech constitution. The chapter on constitutional review was hastily drafted, and important matters, such as initiation of legal proceedings before the court or execution of the court's decisions, were left to further regulation. Statements such as "the law may provide that the Supreme Administrative Court rather than the Constitutional Court shall decide on . . ." or the court decides on jurisdictional disputes between central and territorial administrative bodies "if they do not fall under the jurisdiction of another body" give an impression of the drafters' indecisiveness and will likely be changed.

The constitution-making process in both republics of the former Czechoslovakia is far from complete. The two acts analyzed here still look more like hastily drafted interim constitutions than full-fledged basic laws. To compose a coherent whole and form the basis of a truly democratic society governed by the rule of law, they require either a heavy amending process or adoption of numerous implementing constitutional acts. In both cases, the final success of constitutional reform depends on smooth cooperation from democratic forces and maturity of the people using the new mechanisms of political pluralism.

The Human Rights Situation Through the year following the velvet divorce, the gap widened in the economic situation of Czechs and Slovaks, but the countries' shared cultural and ethnic problems before the split remained for the most part unchanged.[394] In both republics three areas can be singled out as the most troublesome in terms of human rights protection. As with all other East European countries, the treatment of ethnic minorities is still the issue raising the most serious concern. Moreover, observers in both countries noted some irregularities in the treatment of former communist collaborators and in the protection of the freedom of speech and press.

Numerous ethnic minorities live in both the Czech Republic and Slovakia. However, in censuses of both republics the exact number is thought to be drastically underreported since most groups fear persecution if they identify themselves.[395] Both Czech and Slovak constitutions provide for the equality of citizens and forbid discrimination.[396] However, the Slovak constitution's pro-

tection of ethnic minorities has been the center of controversy, basically because of the document's strong sense of nationalism. In its introductory section the constitution states, for example, that "Slovak is the state language on the territory of the Slovak Republic. The use of other languages in dealings with the authorities will be regulated by law."[397] Further, it articulates concerns of the drafters that "membership of any minority or ethnic group must not be to anyone's detriment" and that "enactment of the rights of citizens belonging to national minorities and ethnic groups that are guaranteed in the Constitution must not be conducive to jeopardizing the sovereignty and territorial integrity of the Slovak Republic or to discrimination against its other inhabitants."[398] As the CSCE report noted, "this language has given rise to fears that mere discussion of minority concerns may be deemed conducive to discrimination and will be restricted under this clause."[399]

As with most other European countries, Gypsies represent the minority that faces the widest and most acute forms of discrimination. Gypsies live in both republics, although more of them reside in Slovakia. As mentioned, this minority confronts various forms of discrimination that stem from societal prejudices rather than from deliberate governmental action or policy. They perpetuate a lower standard of living, illiteracy, crime, and high unemployment among Gypsies. Moreover, incidents have occurred where Gypsies have been denied service in shops or restaurants, and other incidents have incited violent attacks against them.[400] Perhaps most alarming, even public officials have showed prejudice. In September 1993, Premier Meciar, noting the high birthrate among Gypsies, indicated that "if we do not deal with them now, in time they will deal with us. It's necessary to understand them as a problematic group which rises in numbers."[401] Although steps have been taken to better the situation, such as the creation of the Romany Culture Center, which educates language teachers, the Gypsies have been unable to mobilize because of disorganization and factionalism.[402] It appears that the Gypsies have suffered the most from the fall of communism in Central and Eastern Europe because under communism they enjoyed many economic and social protections. However, with the introduction of a market economy's competitive spirit, the "open prejudice and persecution that have marked the history of the Roma" have been rekindled. As a result, many Gypsies will most likely vote for communists in future elections.[403]

The divorce of both nations raised concerns among international human rights groups about treatment of the sizable Czech and Slovak minorities living in both countries. The problem has been particularly acute in the Czech Republic where, until the end of 1992, some 30,000 Slovaks asked for Czech citizenship, and three thousand new applications were coming in every day.

Responding to this situation, in December 1992 the Czech parliament passed a law on citizenship, which became effective with the split of the two republics. Basically, the law provides that a Slovak who wishes to establish Czech citizenship must not have committed a crime within the past five years and must have been a permanent resident of the Czech Republic for at least two years. Furthermore, because the Czech constitution forbids dual citizenship, those Slovaks seeking Czech citizenship must additionally submit an affidavit indicating revocation of their Slovak citizenship.[404]

Slovakia has fewer problems with Czechs wishing to reside there, but concerns have arisen over Hungarians, the largest minority in Slovakia. Some half-million Hungarians, who are concentrated in the country's southern portion,[405] have expressed much concern with the 1990 language[406] law. This law, while sanctioning Slovak as the official language, permitted minorities to use their native languages, but only in areas where at least 20 percent of the population consisted of their ethnic group.[407] Furthermore, the Slovak constitution made several provisions for ethnic minorities such as the right to develop their culture, the right to conduct business in their native languages, and the right to join national minority organizations.[408] In all these instances, in 1993 the Hungarian minority maintains the Slovak society, as well as Slovak leadership and government, have been inactive and unresponsive. In 1994 the situation seemed to improve, which caused the monitoring agencies to report that "Hungarians participated successfully [at] all levels in the political, economic and social life of the country, although none rose to government ministerial posts."[409]

For observers focused on further developments of political pluralism in the countries of former Soviet dominance, the treatment of former communists and particularly communist collaborators gave rise to some concerns. On October 4, 1991, the Czechoslovak parliament adopted a law providing for a "sweeping purge from government of former communist party top officials and secret service agents."[410] Basically, the law requires citizens seeking highly placed jobs to provide evidence that they did not collaborate with the secret police;[411] the law then bars such collaborators and other categories of people from holding public office for at least five years. This was the first lustration law passed in postcommunist Eastern Europe,[412] and it was met with much criticism, both locally and abroad.[413] Although Havel's government initially supported and helped draft the law, the text finally enacted was harsher than his proposed version.[414]

Basically this "purge" law applies to two groups. The first, which consists of "agents, informers and owners of conspiratorial apartments," is guilty under the law merely by the fact that their names are in the files at the ministry

of internal affairs, and individuals in this group cannot appeal the finding of guilt. The second group—"conscious collaborators"—includes those who initially refused to cooperate with the former state security agency but whose names remained in the register; individuals among this group can seek redress.[415]

In February 1992, when an independent appeals commission was established, it soon discovered a third group, referred to as "Category C." These people were listed in the files of the former state security agency, but only because at some point they had been called in for questioning. By October 1992, only fifteen of the 70,000 people so listed were deemed "conscious collaborators." And in November 1992 the constitutional court ordered that while Category C should be eliminated, the rest of the law should still apply.[416]

On July 9, 1993, a decommunization law was passed by the Czech parliament. Basically, the law denounced communism "as of 1948." If the law were applied retroactively, Czech authorities would have a chance to pick out those communists accountable for ordering and conducting crimes.[417] In Slovakia the purge law remains in effect and reportedly has been arbitrarily applied. Although in 1992 the Slovak government declared that it would revoke the purge law, opinion polls indicated that more than 50 percent of Slovaks wanted it retained.[418]

With a dual understanding of the social abomination of communist human rights practices in both republics, some concern is reasonable that the "purge" laws may be used to block neocommunist and other leftist groups from the political "free competition" guaranteed by both constitutions.[419]

Of other problems dependent on the protection of human rights, freedom of speech and freedom of the press generated some concern. In the Czech Republic in 1992, one could speak out and criticize government and public figures. The Slovak constitutional court, citing earlier decisions as a precedent, declined to review legal bases for the challenge to the lustration law that was filed in May 1994.[420]

Newspapers could represent political parties or remain independent, and the print media faced no censorship or even fear of governmental intervention.

In Slovakia, however, concern has been shown that government is attempting to infringe on constitutional guarantees of press freedom. For example, the government refused to privatize Danubiaprint, which is a state-owned manufacturer of newsprint. Further, Prime Minister Meciar's request for "ethical self-regulation" was viewed as a call for self-censorship, and newspapers that printed articles critical of Meciar or the ruling party, Movement for a Democratic Slovakia (HZDS), were censured by the minister of culture and his deputy for media affairs. Finally, in the fall of 1992, Meciar called for

the establishment of "journalist senates," or extraconstitutional bodies, for expediting hearings of journalists accused of defaming public officials. Also at this time, cabinet-level government officials began to warn journalists that punishment would be imposed for "not telling the truth about Slovakia." Both occurrences created tension in Slovakia and concern over the future of press freedom.[421] For the most part, it is evident that the Slovak government has attempted to guarantee positive reporting on public leaders and officials by maintaining state ownership of the broadcast media and much of the print media. During the next two years the situation did not change substantially, and in 1994 numerous newspapers published freely. Still, Meciar's MLDS party kept calling for government regulation and suppression of the press.[422]

Through 1992 in the CSFR, television broadcasting facilities were still state-owned, while the granting of licenses to private television stations was delayed until after the CSFR's breakup. In both the Czech Republic and Slovakia the parliaments created television boards, which, because board members were appointed by government, inspired much debate as to their independence. In September 1992 the Slovak parliament adopted legislation that would convert the television council into an independent, nonpoliticized entity.[423] However, many were concerned that the law, which gave parliament the power to elect members to the council as well as the television director, would give the government power over Slovak television.[424]

Thus, the divorce of the Czechs and Slovaks was not as "velvet" as proclaimed by mass media in both nations. One can observe that the decision to split up was made by political leaders and confirmed by representative federal bodies virtually paralyzed by growing controversies between the two nations. The decision was made without any appeal to the mechanisms of direct democracy, and the divorce left both countries politically and economically vulnerable as well as having severe implications for human rights policy. Despite governmental assurances in both republics that fundamental constitutional freedoms would be protected, the situation of minority communities has been difficult, and protection of their rights, particularly in Slovakia, insufficient. With respect to the policy of Meciar's government, the CSCE report concluded that "democracy and minority rights will stand or fall together. Infringements on the rights of minorities inevitably impact negatively on society as a whole, and government policies that limit academic freedom, unduly restrict the media, or slow the process of privatization are likely to disproportionately burden minorities."[425] Both republics' governments claim that irregularities in human rights protection have been intensified by the economic hardships facing all East-Central European countries, and despite economic, political, and cultural problems, the authorities are committed to

improve their countries' records in fulfilling human rights obligations. How successful these efforts will be remains to be seen.

HUNGARY

Amending the Constitution Of all Central European countries, Hungary seems to be the least determined to adopt a brand-new constitution. The current political structure in Hungary was formulated by the 1949 constitution, which was heavily amended in 1989, contains a broad range of human rights protections, and provides for a democratically elected parliament, a parliamentarily elected president, and an independent judiciary.[426] The 1989 amendments confirmed the temporary character of the constitution, but further constitutional development was slow and at this writing the chances for speedy adoption of a brand-new Hungarian basic law seem to be slim.

The amendments introduced at the end of the 1980s and the opening of the 1990s to the Constitutional Act XX of 1949 were the first thorough constitutional transformations within the Soviet bloc.[427] According to the newer constitutional text, Hungary changed its official name from the Hungarian People's Republic to the Republic of Hungary. It no longer described itself a socialist state in which all power belonged to the working people and their leading force, the Marxist-Leninist party. Instead, the republic was described as "a constitutional state implementing a multi-party system, parliamentary democracy and social market economy."[428]

Constitutional amendments emphasize that the Republic of Hungary draws from achievements of Western-type democracy and from traditions of democratic socialism. Except for the introductory statement, the word "socialism" was carefully deleted from the entire constitutional text. Typical statements of socialist constitutions on "the process of building of socialism,"[429] "elimination of the exploiting classes,"[430] and "the dependence of the rights of citizens on the interests of socialist society"[431] were omitted.

The constitution no longer guarantees a privileged status to "all forms of social ownership."[432] Amendments declare that "the economy of Hungary is a market economy," and they give equal rights and protections to both public and private ownership.[433] The newer text recognizes and guarantees, within constitutional limits, the expropriation of property, but only for reasons of public interest; the right to free competition; and the right of inheritance.[434]

Constitutional amendments did not change the form of the state, which is still described as a parliamentary democracy with parliament as "a supreme organ of state power and popular representation." Parliament still has powers

to elect the highest executive and judicial officials of the state, such as the council of ministers, the constitutional court, the commissioners of citizens' rights, the presidents of the state audit office, the national bank, the supreme court, and the chief public prosecutor. Parliament's term, however, was shortened from five years to four, and its rights to declare a state of war and to pronounce states of exigency and emergency were reserved to the decision of a qualified, two-thirds majority.[435] In addition, the amendments imposed new checks on the power of parliament through the elimination of the collegiate head of state, the presidium of the Hungarian People's Republic, and creation of the separate office of president of the republic. The amendments also introduced elements of direct or plebiscitary democracy by adding provisions on a national referendum.[436] After numerous attempts to stipulate that the president be elected directly by the Hungarian people, the current act declares that he be elected for five years by parliament, with only one chance for reelection. Nomination for the post requires valid support from at least fifty members of parliament, with each member having the right to support only one candidate.[437] The election can take place in several rounds. In the first two rounds the president can be elected only by a qualified majority of two-thirds. In the third round, where only two candidates remain, a plurality suffices for election. The president cannot be recalled by parliament, but all measures taken by him are required to be countersigned by one of the ministers, who are elected and dismissed by parliament. The president has no fully independent power. He is a senior statesman who is an intermediary between parliament and the prime minister. After consultation with the prime minister, the president appoints ministers. However, final approval of the governmental program and the election of the prime minister are vested in a simple majority of parliament.[438] Able to appoint and dismiss only parliamentary undersecretaries, vice presidents of the national banks, and university professors, the president represents the Hungarian state and is commander-in-chief of the armed forces.[439] He can be impeached on the motion of one-fifth of all parliament members, supported by a vote of two-thirds of parliament's members; impeachment also must be considered by the constitutional court.

The president has no constitutional right to veto legislative acts. He can, however, ask parliament to reconsider an act and eventually submit it for legal review to the constitutional court. If the court does not declare the act unconstitutional, the president must sign it within five days. The president, after consulting the prime minister, the speaker of parliament, and the heads of parliamentary party factions, may dissolve parliament if it withdraws its confidence from the council of ministers at least four times within twelve months or is unable to appoint that council. The provision allowing the president to

dismiss parliament only twice during his tenure was dropped by more recent constitutional amendments.

Another remarkable change is the introduction of a new constitutional court, elected by two-thirds of parliament and vested with the right to annul laws declared unconstitutional. This court has jurisdiction over an exceptionally broad range of issues, and standing before the court was generously granted to a diversity of applicants. Art. 32/A/3 states that "the proceedings of the Constitutional Court in cases determined by Law may be initiated by anyone." Herman Schwartz commented: "In Hungary, anyone can challenge legal rules and other legal means of state guidance," as well as human rights violations. No standing restrictions therefore hinder any legal rule that has become effective, thereby allowing challenges to all existing as well as to all newly enacted legislation. But in cases of preliminary examination of bills, parliamentary acts enacted but not yet implemented, standing orders of parliament, or international treaties, standing is given only to the president, parliament, a standing parliamentary committee, larger groups of deputies (more than fifty), and apparently to the collective government, not just to a single minister. Also, conflicts of jurisdiction can be raised only by the parties involved. Parliament, however, can extend standing to those not already included in the various categories.[440]

The court's initial membership of fifteen was reduced to eleven by act 74 of 1994, which modified art. 32 of the constitution. Commentators observed that "by this self-denying amendment, the governing coalition forfeited an opportunity to fill four of six seats presently vacant on the Court."[441]

Also, despite the important development of constitutional review in Hungary, the requirement of a court's unpolitical character is, at a minimum, unusual and unrealistic. The provision that no court members should belong to political parties is expected to be reconsidered; the rationale for this requirement also probably will be disputed in a forum beyond the courts.[442]

Major constitutional changes were introduced into chapter XII on fundamental rights and duties. Economic rights that for propaganda value were inserted in all Stalinist constitutions gave way to the declaration of human rights and dignity and to the criminal due process rights of citizens that were omitted by socialist documents. The Hungarian constitution now guarantees due process rights against unlawful prosecution, the right to liberty and personal safety, the right to compensation for victims of unlawful arrest and detention, the presumption of innocence, the right to a competent defense, and the observance of the principle *nullum crimen sine lege,* which means that no person should be convicted or punished for an action that, at the time of its commission, did not qualify under the law as a criminal offense. The list of

civil rights and freedoms is more impressive. It includes the right to freedom of thought, conscience, and religion, the free expression of opinions, liberty of the press, the right to freely create organizations or communities, and the right to strike. The constitution no longer states that the exercise of rights is inseparable from citizens' duties. It does, however, enumerate several basic duties in its concluding articles: to defend the country; to contribute, in proportion to income and property circumstances, to public expenditures; and of parents to provide means for the education of minor children.

In short, the Hungarian constitutional amendments, although requiring further refinement, created a solid framework for economic and social restructuring. The reform initiated from within the party was undertaken by noncommunist elements and continued without their losing momentum. Despite Hungarian ethnic and social problems, its grass-roots support in political restructuring and the flexibility of its competing political forces gained credit for Hungary in the West, which facilitates the country's progress toward marketization and privatization.

Perspectives for the New Constitution Several factors contribute to the political stalemate that makes further constitutional reform in Hungary difficult. First was an initial crumbling support for the ruling parties. Parliamentary elections held in two rounds in March and April of 1990 determined the distribution of seats among the main political forces. The winning Hungarian Democratic Forum (HDF), with 43 percent of the seats, formed the governing coalition, joined by the Independent Smallholders Party (ISP), which gained 11 percent, and the Christian Democratic People's Party (CDPP), which controlled 5 percent.[443] The opposition comprised the Alliance of Free Democrats (AFD) (23 percent), the Hungarian Socialist Party (HSP) (8.5 percent), and the Federation of Young Democrats (Fidesz) (5.4 percent).[444]

In this initial phase of reforms the partisan pattern of voting in the Hungarian national assembly left no room for constitutional restructuring. According to article 24, sections 3 and 5 of the constitution, the amendment or adoption of new basic laws requires the vote of two-thirds of the national assembly.[445] Hence, without the opposition parties' support, the coalition occupied approximately 60 percent of 386 assembly seats and fell short of the majority needed to pass a brand-new constitution.[446]

After elections, the right-of-center coalition of HDF, ISP, and CDPP held 230 parliamentary seats, but the poor showing of the coalition in public opinion polls, which contributed to internal turmoil among the three parties, eroded the HDF's control of the national assembly. An opinion poll taken in mid-December 1992 indicated that if elections were held at that time, voters

would favor opposition parties: the Federation of Young Democrats (FYD), 36 percent; the HSP, 14 percent; and the AFD, 11 percent. The newly formed Republican Party would receive 3 percent of the vote, while the parties of the ruling coalition would receive these percentages of the vote: HDF, 8 percent; ISP, 7 percent; CDPP, 5 percent.[447] Moreover, the top candidates ranked as most popular were members of opposition parties, Janos Palotas, a former HDF member who founded the Republican Party, and Viktor Orban, the leader of the FYD faction.[448]

Also, debates within parliament became the subject of much criticism, with members accused of arguing endlessly without coming to any definable terms. Of the three parties in the coalition, the ISP and HDF have been continually at odds, creating an atmosphere of extreme factionalism and excessive politicalization of all legislative work.[449] Such an atmosphere affected any serious attempts at drafting a new constitution.

Further contributing to the slow progress of constitutional reform was the executive's ineffective cohabitation policy, widely heralded in the beginning of its new term. The possibility of cooperation between Prime Minister József Antall, representing HDF, and President Arpad Goncz was heavily tested. Antall agreed to the appointment of Goncz because of a deal struck between the two parties; HDF members in parliament supported Goncz in return for AFD support of various constitutional changes proposed by the HDF.[450] Although Hungary's backing of a parliamentary system contrasts significantly with the attempts of several East-Central European countries, notably Poland, Ukraine, and Belarus, to introduce elements of a presidential system, Goncz sought to increase his official prerogatives.[451] Starting with a largely ceremonial position with no real power or political responsibility, Goncz, who was widely respected, played a significant role as mediator. He frequently addressed the country on issues involving national policy, negotiated with transportation workers during a strike in October 1990, and used his power to send the compensation bill (for former owners of land seized by the communists) to the constitutional court for review.[452]

In the summer of 1992 the disagreement between Antall and Goncz and between the HDF and AFD became more acute, and the dispute figuratively erupted into open warfare, with Goncz refusing to comply with Antall's order to fire the directors of state-run radio and television.[453] The internal struggles within the executive continued as a result of reshuffling of the current government, which took place in February 1993, when, at the request of Antall, Goncz relieved six ministers.[454] Antall admitted that these changes were made in part to "improve the coalition government's overall image."[455] Despite Antall's statements that no more changes in government would take place

until the general elections in 1994,[456] the turmoil was effective enough in blocking passage of the most important constitutional government initiatives.

A third cause that discouraged the governing coalition from putting forward a new draft constitution was the strength of the Hungarian leftist movement. In the beginning of the 1990s commentators observed a virtual rebirth of the Socialist Party. Opinion polls have shown that the Socialists were gaining increasing respect among the public. Sensing this growing public support, the renamed communists seemed less than accepting of further purging of their original 1949 constitution, much less the adoption of a new constitution. The constitution, amended in 1989 and 1990, still restrained operations of parliament by old procedural rules, called standing orders, and provided opportunities for the opposition to obstruct legislation.[457]

Last, the governing coalition had economic, rather than political priorities, on its agenda. The economy of Hungary has been on a downward slope since the end of communist rule. At the end of the first quarter in 1991, inflation was up 35 percent.[458] By the end of June 1992, joblessness was at 10.1 percent, with more than 547,000 registered unemployed.[459] The main characteristics of the economy at the close of June 1992 were declining production and consumption and a budget deficit higher than planned.[460] The consensus on the need for foreign investment was overwhelming. And the West, along with the IMF and the World Bank, have accommodated Hungary's requests for money. Some 34 percent of Western companies asked to indicate any interest in investing in East-Central Europe gave Hungary as their first choice, opposed to 32 percent for Poland and 29 percent for the Czech and Slovak Republic.[461] Foreign trade between Hungary and the West also rose. As of 1990, the Soviet Union was the chief trading partner of Hungary, but by 1991 Hungary-USSR trade had fallen to almost nothing, while trade with the West had soared.[462] When the coalition came to power, Prime Minister Antall maintained that the key to moving forward was to stimulate foreign investment and trade.[463] Although Antall began his term intending to effect a transformation to a market economy, concerns over unemployment and inflation slowed the process. For the most part, the Hungarian people were dissatisfied with Antall's performance. While the leaders of many nations held Hungary in esteem as the pioneer of reform in Eastern Europe, the general mood of the Hungarian population was dissatisfaction and pessimism.[464] Although the HDF and Antall had the instituting of further constitutional reform on their original agenda, no significant changes to the constitution, with the exception of minor revisions in 1991 and 1992, have occurred. The overriding concern in Hungary seemed to be inflation and the mounting unemployment rate, at the expense of the proposed constitutional reforms.

On December 12, 1993, Prime Minister Antall died, and in the second round of the new parliamentary elections, held on May 29, 1994, the Socialist Party gained an absolute majority of 209 seats in the 386-seat parliament. Gyula Horn, the party leader, won the position of prime minister.[465] The Socialists promptly entered into a coalition with the Alliance of Free Democrats and announced the will to reinvigorate works over the new constitution.

The parliamentary partnership quickly passed the new rules of the house (September 20, 1994) and two important constitutional amendments, act 74 reducing the number of justices of the Constitutional Court to eleven, and act 73, which amended art. 32B of the constitution, eliminating the collective character of the ombudsman's office and allowing a single individual to fulfill the position's responsibilities.[466]

The progress of constitutional works was not that impressive. First attempts to establish the committee responsible for drafting a new constitution failed in 1994, and the process was further delayed by preparations for presidential elections in the spring of 1995. Preelection bargaining reopened a dispute over presidential prerogatives. In March 14 the opposition Independent Smallholders Party presented a petition with 200,000 signatures calling on parliament to hold a referendum which would decide about introduction of direct presidential elections and shifting some powers from the government to the president. Asked for a recommendation, the Constitutional Court ruled that the constitution cannot be amended by referenda and as a result the parliament refused to submit the issue of direct presidential elections to the national referendum.[467]

In the first round of the elections, held on June 19, 1995, Arpad Goncz was reelected president by two-thirds of parliament. Almost simultaneously, two days earlier, parliament finally established a constitutional committee. As a result of a compromise with the opposition, however, the constitution was again amended. Act 64 of 1995 provides that resolutions of parliament and the adoption of rules for constitution-making require four-fifths of parliament's members. That the compromise recognizes a significant role for the opposition in drafting the new act, however, makes the process even more complicated. "Resolution No. 62/1995 (VI.17) amends the standing orders that govern the operations and term of the Constitutional Committee. The term of the committee shall expire upon the ratification of the new Constitution or when the mandate of the sitting parliament, elected in 1994, expires. If a new constitution is not drafted during the term of the present parliament, the process of constitution making must begin again. The amendment also requires that each parliamentary faction have an equal number of MPs on the

Committee, that party delegations have an equal vote, and that each Committee decision receive at least five votes. / . . . / The resolution calls for the Committee to make an effort to introduce to the House the principles of the new Constitution by December 31."[468]

The Constitution in Operation Although Hungary seems to have fewer problems with human rights violations than other Central and East European countries, it nonetheless shares with them a major concern about ethnic minority rights. Because a number of large minority groups abroad[448] are often subject to discrimination and human rights violations, Hungary has tried to grant better protection to its own ethnic minorities. For instance, in September 1990 the government created an office for national and ethnic minorities and set up a minority roundtable that consists of representatives from each of the ethnic minority groups negotiating with the government about legislation affecting minorities.[449] In November 1992, Hungary also ratified the European Human Rights Convention and accepted the jurisdiction of the European Human Rights Committee and of the European Human Rights Court.[469] Hungary is also a signatory to the European Charter of Regional and Minority Languages and signed with Russia the Hungarian-Russian Declaration on Minority Rights.[470]

The Hungarian constitution provides for protection of ethnic minorities in several sections. First, a general clause protects virtually everyone in Hungary from discrimination.[471] Second, an entire article in the constitution, directed toward ethnic and national minorities, states that they "shall be constituent factors of the state," shall participate in public life, have the right to foster their culture, conduct education in their native languages, establish local and national self-governments, and be represented in the central organs of the state.[472] Moreover, parliament has passed implementing legislation that pertains to national and ethnic minority rights. The law, which prohibits all forms of discrimination against minorities, was passed by a vote of 304 to 3.[473] It defines national and ethnic minorities as "all ethnic groups which have lived in the Republic of Hungary for at least a century and who are Hungarian citizens and have their own language, culture, and traditions,"[474] and it gives minorities the right to set up local and national authorities; it also provides for an ombudsman, to be elected by parliament, who will "control and promote the enforcement of [minority] rights."[475] In December 1994, Hungary held its first local elections for minority self-government in the course of which more than six hundred minority local bodies were elected.[476]

Despite these theoretical protections, foreign and local observers from various human rights groups stated that, in practice, minorities continue to

face prejudice and discrimination, which has been manifest in many forms, including harassment and violent attacks.[477] Such mistreatment mostly effected Gypsies, the largest minority group in Hungary, and Jews, the fourth-largest.[478] The press continually reports stories detailing police abuse against the Gypsy community, but no investigation followed. Moreover, as was the case of Romania, stereotypes are harmful to the Gypsies, who are perceived and therefore treated, as untrustworthy and socially dangerous.[479] While the government criticizes both violent attacks on Gypsies and discrimination against the Gypsy population, it has not sought to actively prosecute perpetrators. Skinheads who harassed or attacked Gypsies, usually were only charged with the crimes of hooliganism or assault with intent to do serious bodily harm.[480]

The U.S. State Department delegation visiting Hungary also noted numerous anti-Semitic attacks, and the Helsinki Commission confirmed that although "the government has consistently condemned anti-Semitic activities and has taken measures to protect and affirm the status of Hungary's Jewish community," anti-Semitism is of special concern in Hungary.[481] While the government does not condone anti-Semitic expression, prominent members of the HDF through their publications have incited anti-Semitic opinion. The most publicized example was a highly controversial paper written by Istvan Csurka, former vice president of the HDF, in which blatant antidemocratic and anti-Semitic language was used. In another publication an HDF member of parliament and the party presidium proclaimed that "former Communists, liberals and Jews," had "seized power" in Hungary.[482]

As far as political rights and social freedoms are concerned, the commentators noted no major violations or irregularities. The right to form organizations and assemble peacefully is provided for in the constitution,[483] and, in practice, it is basically unrestricted.[484] Furthermore, permits generally are not required to assemble in public unless the assembly is near military installations, embassies, or key government buildings. Although the police may on occasion revoke permits, no police abuse of this power was reported.

The constitution provides for freedom of movement within Hungary and freedom to leave Hungary to all persons lawfully in the country.[485] Citizens cannot be expelled and have the right to return from abroad at any time.[486] They can freely emigrate, unless they have substantial court-assessed debts or knowledge of state secrets. These liberal constitutional provisions exposed the Hungarian government to several problems, mostly caused by the influx of refugees from the former Yugoslavia. The government estimated that approximately 50,000 to 60,000 refugees were being provided with food and housing assistance. Trying to reduce the number of refugees, Hungary grants refugee

status only to European nationals. Because of this policy, the government has been faulted by human rights groups for detaining illegal aliens in "unacceptable conditions for excessively lengthy periods" at a detention center in Kerepestarcsa.[487] Delegations of the UN High Commissioner for Refugees regularly visit the center and have asserted that few of the illegal aliens can be classified as refugees[488] and that conditions at the camps are acceptable.[489]

With regard to freedom of speech, an ongoing battle is taking place on how much control the government should exercise. The struggle for media freedom reached its climax in 1992 after the prime minister's attempts to have national ratio and television presidents ousted for mismanagement. In short, the parliamentary opposition, composed of liberals and socialists, supported autonomy for the media, while the parties in the governing coalition supported a supervisory board that would keep partisans out of the media. In 1994 one private national ratio station existed; the government also had a minority share in another. There were no private television stations, while the conflict over the print media's independence seemed to be slightly calmer.[490]

Freedom of religion is generally unrestricted in Hungary. Church and state are separate according to the constitution.[491] Although Roman Catholicism is practiced by approximately 65 percent of Hungarians, other religions are formally able to practice their faith freely. Still, observers noted some attempts to give special benefits to traditional and well-established religious groups. In July 1993, a petition was signed by 63,414 Hungarians protesting proposed amendments to the 1990 church law, which provided that legal church status be revoked for any religious group "if it had not operated in Hungary for at least 100 years or if it did not have a certified membership of 10,000."[492]

The majority of reports from Hungary confirm that its government generally operated within the limits imposed by a freely elected legislative assembly. It respected the principles of a parliamentary democracy, struggled to facilitate the country's transition from a centrally controlled economy to a market economy, and, despite some irregularities, generally created the conditions in which fundamental constitutional human rights and civil liberties are respected in practice.

Why Are the Firsts the Lasts?

The anticommunist revolt of 1989 destroyed the "magic" of Marxist-Leninist clichés such as "justice for all," "collective mentality," and "perfect equality."[493] The revolt compromised once sacred and apparently all-explaining keystones of Marxism—"the rules of dialectics," "the concept of class war,"

and "the withering away of state and law." Societies proved to be pluralistic rather than dichotomous. Social conflicts did not explain themselves through a simplistic concept of two-class clashes. The whole thesis of the withering away of state and law found itself in a trap. Stalin proclaimed that the dictatorship of the proletariat abolished classes. Thus, if law and state were nothing but instruments of class domination, they could exist only in societies split into opposite classes. Class law without classes was self-contradictory, and no "dialectic decorative rhetoric" could overcome the paradox of the concept's existence in the socialist classless society.[494]

Among all of these window-dressing ideas, which for decades served as a sort of ideological facade or social cement rather than as the real creed of communism, a dominant thought proved to be more time-resistant than others. This was a Hegelian idea that "it is not consciousness that determines life, but life that determines consciousness."[495] Transformed into the main thesis of Marxist-Leninist historical materialism, this idea proclaimed that the conditions of life, the economic basis of society, and the means of production determine human consciousness, ideas, and even politics. Ideas, views, and convictions have consequences, but they are simply sums in the total determinants of life. The economic basis of society is the primary engine of the evolution of human civilization. In Marx's view, if the social superstructure of moral, legal, religious, and political ideas does not keep up with the development of economic infrastructure, it has to be changed by class war or revolution.

Ironically, communism did not prove exempt from this thesis. All moral, ideological, and social deficiencies of communism notwithstanding, the system's crisis was sealed by its irreversible economic failures. Similarly, the fate of the new democracies seems linked to the successes of their large-scale economic experiments. As Maria N. Todorova wrote, "for all the euphoria over democratization, intellectuals' revolution, and the rest, economic problems have dominated the public discourse throughout."[496]

The new experiments of East-Central European countries with democratic mechanisms perfectly illustrate this thesis. The people's sentiments in East-Central Europe for their communist past seem to be determined by the signs of a quick economic recovery or the symptoms of further economic stagnation. The graver the economic hardships in the new democracies, the stronger the popular yearning for a return to the elusive state protectionism of the communist era. Thus, the chance of the communist reformers returning to power may be increasing.

Although some nostalgia for communist stability is common to all new democracies, economic, cultural, and ethnic factors all had a different impact

on the reform process in these countries. The longing for the communist "equality in misery" is rooted in misinformation or lack of knowledge about life in the West. For decades, communist propaganda tried to ridicule Western moral and social values; it presented the new generation of people in East-Central Europe with pictures of rotten societies living in capitalist- and mafia-ruled urban jungles. The widened exposure to Western political, legal, and social culture that resulted from glasnost and perestroika verified the myth of "a rotten and greedy West" and contributed to a contrasting, but equally false, image of the West as a paradise. People in the new democracies never comprehended that being elevated to a higher standard of living does not automatically guarantee happiness for all. Newly introduced market mechanisms revealed step-by-step that those at the bottom of the social structure are still frustrated, even if their conditions of life improved significantly. They might be better off than they were in communist times, but they are unequal within a different kind of society. Communism left them longing for a better life, but it also left them with the myth that equality is a conditio sine qua non of happiness.

Paradoxically, it is difficult to understand that a happy world in which all people would be equal and wealthy is utopian—utopian not because wealth cannot be distributed equally, but because a distributive justice deprives individuals of the satisfaction that stems from the possibility of improving their life conditions at the cost of others. Wealth is always relative, and the wealth of the equal quickly ceases to be wealth at all.

Communism elevated the concept of a world of happy and equally wealthy people to sacrosanct dogma. The theory and practice of Marxism-Leninism, however, varied substantially. Instead of delivering the promised paradise, communism suppressed economic vitality and spontaneity, protected its own inability to be cured, and locked people in a vicious circle of equality in misery. Still, for those suffering the most severe hardships of market transformation, communistic equality and unhappiness of the many seems better than capitalistic unhappiness and inequality of the few. Communist helplessness appears less painful than a capitalist combination of hell and heaven.

Purging the political culture of the societies of East-Central Europe of postsocialist myths requires much time and effort. More economically advanced countries such as Hungary and less socially, ethnically, and religiously fragmented countries such as Poland seemed more immune to promises of "postcommunist communism" than less-developed countries with weaker democratic and liberal traditions such as Albania, Bulgaria, and Romania. It proved true, but only for a while.

Resistance to a communist comeback did not automatically entail eco-

nomic and political success. Paradoxically, the communist governments that retained power sometimes were more efficient in terms of speedier constitutional transformation. Although the constitutional changes were not profound enough and the new constitutions still bear communist stigmas, the constitution-drafting process could be quickly completed by the former communists desperately trying to build a reputation as reformists and by the communist-controlled parliaments.

The countries that started their peaceful process of retreat from communism early, such as Poland, Hungary and Czechoslovakia, overestimated the strength of democratic forces and the maturity of their societies' political culture. It became apparent that the democratization of political life might open a Pandora's box of evils. Factional struggles of deeply pluralized legislative bodies were counterproductive and delayed legislative processes. Deputies learned how to speak openly and criticize each other faster than they learned to respect opponents' arguments. The more velvet the first stage of the transition, the more compromises were made. This process further protracted the advancement of democratic reform. On the other hand, the process of constitution-making in the countries still controlled by former communists strengthened the tendency of the drafters of the new basic laws to draw from the socialist legacy. Further, it affected the coherence of the new constitutions and was frequently highly dysfunctional for developing market mechanisms. For the time being, it looked as if the countries in the avant-garde of democratic transformations such as Poland, Hungary, or Czechoslovakia would be slower but more consistent in their efforts to adopt mature constitutions that were purged of a socialist legacy and of a well-tested durability. It seemed likely that the last might still be the first.

The communist electoral victory in Poland and the likelihood of a similar development of events in Hungary affected the clarity of this conclusion. The communist takeover in East-Central Europe may mean that the first will be the last with respect to both the speed of constitutional reform and the process of purging their legal systems of relics of the socialist past.

5

THE FABRIC OF THE NEW CONSTITUTIONS

Overview of a Model

This study's main goal is to report on the constitutional process in the new European democracies from a comparative perspective. This entails an attempt to discover similarities and differences in the processes of constitutional works, with a special emphasis on examining common fundamental features of the new constitutional drafts.

Clearly, the countries subject to examination have shared some distinctive key elements that characterized the socialist system, such as one-party rule, socialist ownership of productive resources in the form of state property, income redistribution controlled by the government, and central planning. They also shared the system of "democratic centralism," which aimed to combine a centralized decision-making process with dependence on the creative activity and initiative of local managers. Among these features one could easily discover the common core of the socialist constitutions.[1]

The preceding chapters have tried to identify some economic, social, and political problems shared by the new democracies in their first postsocialist years. The question remains to what extent these problems reflect on formation of the common core of the new constitutions. To what extent will this core absorb the basic principles of Western constitutionalism? Is there any new constitutional model surfacing in this region? To respond to these questions, several issues were selected. Although the final evaluation of postsocialist basic laws must be postponed until more East-European constitutions are formally adopted, the process of constitutional drafting is so advanced that some tendencies already can be identified and some observations made.

The Structure of the New Constitutions

The fabric of most constitutions consists of many essential components: a preamble; general principles of state organization; fundamental rights and

freedoms; a system of state governance including sections on central and local government, sections on judicial structures and judicial control of the constitutionality of laws; concluding provisions on amending the constitutions; a section on emergency measures; and some miscellaneous or transitional provisions. A check of some twenty national constitutions adopted over the past ten years turns up many components listed above.[2] For example, the majority of constitutions under review contain preambles and a section on local government and judicial review, but virtually every constitution includes sections on general principles of state organization, fundamental rights, central government, the judiciary, and procedures for amendments.[3]

From this perspective, the new East-Central European constitutions and constitutional drafts reveal no glaring abnormalities. Most new constitutions and constitutional drafts are of moderate length—150 to 170 articles.[4] Some longer drafts, such as a Ukrainian one, have been criticized for being too detailed, while some others, such as the Russian constitution of 1993, have been faulted for being too concise, vague, and complicated for readers untrained in constitutional interpretation.[5] The consensus among constitutional experts seems to be that constitutions should be short and leave more detailed regulations for implementing constitutional legislation. Americans especially take pride that their constitution has just seven articles and has survived more than two hundred years. However, as Herman Schwartz observed, "Our Constitution consists of the 1789 document, the Bill of Rights, seventeen other amendments, and nearly 500 volumes of the U.S. Reports. It is impossible to know the contents of our constitutional law just by reading the Constitution without studying those cases. Developing that body of law, the body that really establishes our constitutional structure, took 200 years."[6] Schwartz concludes that the Central and Eastern Europeans lack two hundred years of constitutional experience, nor do they have an American type of judicial system; therefore, they need more detailed constitutions.[7]

Only the first part of this argument is convincing. To present the U.S. Constitution as merely a seven-article charter is misleading. First, several articles of the U.S. Constitution break down into lengthy, detailed sections. Second, the Constitution cannot be discussed as a complete act without the amendments. On the other hand, when the U.S. basic law was adopted, nobody could predict the impressive activism of the American courts nor could they predict the subsequent growth of a body of constitutional law. The drafters in East-Central Europe are in a similar situation. What they need is an understanding that the flexibility and completeness of a constitution, and not its length, is crucial. To outlast other laws, constitutions need to be both constant and elastic. As William F. Fox wrote about drafting the U.S. Consti-

tution, "the framers recognized that drafting a truly living document required that some flexibility be built into the document to permit it to accommodate changes in political, social, and economic conditions."[8] To fulfill its goals, then, and to create a firm framework for political, legal, economic, and social stability, a constitution needs to include enough detail. The deliberate use of ambiguous language does not necessarily result in an overall vagueness that would make the constitution incomprehensible to the general public. Similarly, leaving too many implementing regulations might deprive the main body of constitutional law of its superior character and result in the constitution being superseded by inferior law. The final product is always a sum of many, sometimes colliding, elements such as the political and legal culture of the society, its constitutional experience, the activity of the judiciary, or the system of judicial enforcement of constitutional rights. These factors must be analyzed by the drafters themselves. Only the drafters can decide whether a complete and flexible constitution has to be long or short.

Given these general comments, some further observations should be made. While the communist constitutions usually contained extremely lengthy preambles stressing the history and goals of socialism and providing many anti-imperialist references,[9] the preambles of the new East-Central European constitutions are short or omitted altogether. Without exception, every constitution includes general principles and a section on fundamental rights and freedoms. The list of rights usually breaks down into sections or chapters dealing with political, social, and economic rights as well as a section describing the duties of citizens. Some constitutional acts, such as the Ukrainian, Lithuanian, and Azerbaijan, contain special chapters on civic society, which usually cover state regulation of societal relationships with a focus on ownership rights. Several countries—Slovakia, Romania, Belarus, Bulgaria, and Estonia—have separate sections on economy, finance, and state budget.

Sections on the horizontal and vertical distribution of powers between central and local government and legislative, executive, and judicial bodies can be found in all constitutions. Some of the drafts—the Ukrainian, for example—contain a separate chapter on the country's territorial structure and a section on the electoral system and referendums. Following the Soviet model, the Lithuanian and Estonian constitutions retained chapters on foreign policy, and Ukraine, Lithuania, Hungary, and Albania included chapters on national defense.

Judicial control of the constitutionality of law, traditionally discredited by the Stalinist constitutions, is now also a standard element of the reviewed constitutions. Most of the constitutions and drafts, with the exception of the Slovak and Estonian constitutions, contain separate chapters on constitutional

courts or constitutional councils, emphasizing that these bodies are vested with special powers and are separate from regular judicial organs. All of the constitutions and drafts contain concluding sections that usually cover amendment provisions,[11] emergency measures, and miscellaneous provisions on such things as the coat of arms, the seal, the flag, the anthem, the capital.

The Description of the State

Wojciech Sokolewicz, professor of constitutional law at the Institute of Law Studies of the Polish Academy of Sciences, wrote:

> Most generally speaking, the changes now in progress in the political systems of Eastern Europe consist in transition from autocracy to liberal democracy; from arbitrariness of the Communist Party-controlled State to unconditional subordination of State to the rigors of law; and from a loose system of sources of law, their hierarchy obscure in practice, to a coherent and strictly hierarchical one, based on a stable foundation of the national Constitution treated as the basic statute and the supreme law.[12]

The political transformation of the postcommunist world from "autocracy to liberal democracy" is best manifested by changes in the constitutional descriptions of the new East-Central European states. Socialist rhetoric has been carefully wiped out of the new basic laws, which no longer describe their countries as "socialist democracies" or "people's republics." The typical Stalinist phraseology, vesting power in the working classes as represented by their communist parties and emphasizing the working mass's struggle with "exploitation of man by man," has been replaced by references to popular sovereignty, political independence, and territorial integrity. Virtually without exception, the new constitutions and constitutional drafts contain declarations that people are the source of power and that in its external aspect the principle of sovereignty is manifested by the state's exclusive competence to control its own territory. Besides all these references and the usual explanations of a state's unitary or federal character, several terms or labels, commonly used for the description of the postcommunist countries, warrant some attention.[13]

All new constitutions and constitutional drafts describe the state as "democratic." The majority use this term in conjunction with a description of the state as "a state of law" (in Poland and Romania), "a jural state" (in Hungary), "a juridical state" (in Albania), "a state recognizing supremacy of law" (in Azerbaijan), or "a law-based state" (in Belarus, Bulgaria, Kirghizstan, Russia, and Slovakia). All these deviations in references to the well-known French concept of *état de droit* or the German *Rechtsstaat* stem from translational subtleties rather

than doctrinal differences; with few exceptions, the drafters tend to emphasize the importance of this idea and to provide elaborate explanations of it.[14]

The purpose of the constitutional descriptions of the state as "democratic" are (1) to make people as a whole a subject of sovereignty, (2) to state that people manifest their will in a variety of ways and that the principle of political pluralism is fundamental to an efficiently functioning constitutional government, (3) to express that "government of the people" means the rule of the people's majority and the respect for rights of minorities and individuals, (4) to stress that government "by the people" means both representative government and some elements of direct democracy, and (5) to emphasize that government "for the people" means the idea of civic society, which subordinates the state to societal interests.[15]

The forms of the people's direct participation in state power (through referenda or plebiscites) are clearly recognized as important democratic instruments. References to these instruments can be found in all new constitutions and constitutional drafts, and some of these acts—the draft constitution of Belarus, for instance—explain such mechanisms in separate chapters. One of the drafts of Kyrghyzstan's constitution goes even further in that it envisages a model of plebiscitary democracy in which the state is described as "a state of people's self-government" and in which most of the important decisions, such as adopting the constitution, creating parliament, electing the senate and president, dissolving parliament, and removing the president, were to take place by means of referenda.[16]

The concept of the legal state, as provided for in the new constitutions, also contains several essential elements.[17] First, it assumes that the state operates within the clear framework of hierarchically arranged legal acts, with basic laws recognized as the apex of the legal system. To clarify the scope of this framework, some constitutional acts provide an elaborate list of legal acts that fall within the meaning of the law.[18] Almost all the new constitutional acts incorporate international treaties into the scope of the law, some of them (e.g., Romania and Hungary) on the basis of parity between domestic and international law, but many of them (Bulgaria, Poland, Slovakia, and Russia) based on precedence taken by international treaties over municipal laws.[19]

Second, the idea of the state of law means the legality or submission of the state to the law. It stems from the hierarchic character of state organs and the principle that every governmental organ acts within the basis of law. The difference between the state and citizens is that the state and its organs may do only those things allowed by law, while citizens may do everything not forbidden by law.[20]

Third, the state of law provides for constitutional guarantees of the law's

observance. The most important of them is the concept of limited government as embodied by the division of powers and checks and balances. The constitutional state of law also provides an extended protection for human rights in the form of judicial review of the legality of administrative actions and of the constitutionality of statutes, international agreements, and executive orders. Almost without exception, these principles can be found in the new constitutional drafts.[21] As far as the economic and social policy is concerned, most constitutional acts present the new democracies as "market-oriented," with the market system described as a "social one." "Social" means persistent widespread support for a large role played by the state in the relatively egalitarian distribution of wealth. The constitutions of Bulgaria and Romania and the draft constitutions of the Russian Federation, Belarus, and Ukraine clearly use the term "a social state"; the draft constitutions of Poland[22] and Albania refer to a state of "social justice"; the constitution of Slovakia describes the Slovakian state as "socially just"; and the constitution of Hungary speaks about a "social market economy."

The attitude toward market mechanisms is more diversified. Only a few countries, such as Hungary, Russia, Romania, and Slovakia, clearly call themselves "market econom[ies]."[23] Most of the new democracies declare more cautiously that they are "market-oriented" in their common intention to support economic pluralism, meaning "diversified forms of property," to guarantee the freedom of entrepreneurship, fair competition, and to carry on an antitrust policy.[24] Some other new democracies either try to avoid clear constitutional declarations of their economic policy, or, in fact, they lean toward a policy of central planning, limit the scope of activity of private enterprises, and restrict private ownership of land and mineral resources.[26] With all these variations the common tendency to describe a new East-Central European state can be capsulized as a democratic, social, law-based republic that recognizes basic rules of the market as a natural economic environment.

Distribution of the Powers of Government

THE ORIGINS OF THE THEORY OF THE DIVISION OF POWER

In *Federalist No. 9*, Alexander Hamilton wrote,

> The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by

deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times. They are means, and powerful means, by which the excellencies of republican government may be retained and its imperfections lessened or avoided.[26]

In fact, the ideas were not new that governmental checks and balances are essential to free institutions and that power must be divided among several branches to avoid an arbitrary government. The advantages of the separation of powers were recognized by Aristotle and elaborated by Polybius in his examination of the well-balanced Roman system of power. John Locke listed three powers in the British Commonwealth: legislative, executive, and federative; Locke, however, suggested that supreme power lay in the legislative, and he did not recognize the judiciary as a separate power. The judiciary was enumerated among "powers" by Montesquieu, "the oracle . . . always consulted and cited on this subject."[27] But Montesquieu, as Mauro Cappelletti convincingly argued, despite listing the judiciary among "powers," believed that in fact it is no "power" at all. He wrote that "of the three powers of which we have spoken, the judicial is, in a sense, null."[28]

In fact, only to a limited degree did the American Constitution adopt a Lockean or Montesquieuean model of government, and in various countries the idea of the distribution of powers was applied differently. It was obvious, for example, that despite Montesquieu's references to the English system, the powers in the English model were neither equal nor well-separated. In Montesquieu's France, the separation of powers was to impose efficient restraints on the executive power and to protect citizens against the absolutism of monarchs. Separation of powers in the United States was conceived as a guaranty of liberty, but it also was intended to protect the system established by the Constitution against the domination of any single power. As Cappelletti states, "To be sure, the strict separation, 'French style,' of the governmental powers, whether or not actually 'Montesquieuian' in inspiration, was miles away from the kind of separation of powers which almost contemporaneously was adopted by the American Constitution. Separation of powers in America is better described as 'checks and balances.' "[29]

Differing needs dictate that in different systems the principle of the division of powers means different things. The common idea that the powers of the government should be limited and its functions diffused is currently implemented in several basically different ways. In the French model, the principle of the division of powers is associated to a large degree with the idea of the separation of powers in the sense of the actual separation of organs and their functions. Arthur Taylor von Mehren and James Russell Gordley wrote,

The leaders of the French Revolution saw the principle [of separation of powers] in more abstract and conceptual terms. They began with the concept of sovereignty, portions of which were delegated by the nation to each "power." For the "concrete idea of function," there was thus substituted the "abstract idea of power of a special nature that an authority required in order to accomplish its task. Instead of seeing the separation of powers as a political technique, the men of the Revolution announced a dogma of political theory." The principle of separation thus came to be viewed in rigid and abstract terms. Each power was entirely independent of the others; collaboration between powers was forbidden, and theoretically, unnecessary because each had been delegated the fragment of the national sovereignty necessary to discharge its functions.[30]

With time, traditional French mistrust of the judiciary abated, and the French permitted the delegation of some functions from the legislative to the executive power. The functional separation became less clear-cut, but the French system still remained a symbol of a rigid concept of the distribution of powers.

The system of checks and balances, traditionally associated with the U.S. model, emphasizes the equality of power and not the separation of power. Power is distributed among three organs. Each is run by a different team of people, whose functions are to some extent blended and often overlapping. The president can veto legislative acts, and unless the veto is overridden by a two-thirds vote in both houses of Congress, his veto kills a bill. The president's ability to influence legislation stems from his responsibility to report on the state of the nation and on his right to call Congress into special session and to adjourn the legislature if the two houses cannot agree on a date.[31] The Senate confirms and rejects presidential nominees, the House controls the budget and sets procedures for the administrative agencies, and the courts interpret legislation and the Constitution. As enumerated by John Adams, the checks and balances are as follows:

First, the States are balanced against the general government. Second, the House of Representatives is balanced against the Senate, and the Senate against the House. Third, the executive authority is in some degree balanced against the legislature. Fourth, the judiciary is balanced against the legislature, the executive and the State governments. Fifth, the Senate is balanced against the president in all appointments to office, and in all treaties. Sixth, the people hold in their own hands the balance against their own representatives by periodical elections. Seventh, the legislatures of the several States are balanced against Senate by sexennial elections. Eighth, the electors are balanced against the people in the choice of President and Vice President. And this, it is added, is a complication and refinement of balances which is an invention of our own, and peculiar to this country.[32]

In most parliamentary democracies, organs of powers are not separated, powers are not equal, and their functions are blended. The chief executive is a member of the legislative body and is elected by the legislature to run the executive branch. His cabinet members also sit in the legislature, and they simultaneously carry on executive and legislative functions. In this system, the division of powers basically means only that none of the powers can accumulate all basic functions—legislative, executive, and judicial—and that the independence of the judiciary is constitutionally guaranteed. Wade and Bradley wrote that "in many continental constitutions separation of powers has meant an unhampered Executive; in England it means little more than an independent Judiciary."[33]

THE DIVISION OF POWERS IN THE NEW POSTSOCIALIST CONSTITUTIONS

Socialist constitutionalism traditionally rejected the doctrine of the division of powers, claiming that the entire power of governance was vested in the supreme representative bodies—the people's legislatures. The socialist theorists maintained that power in their system was concentrated but that its functions were allocated to different government branches. According to Marx, the doctrine of the separation of powers is "in principle nothing else than a profane industrial division of labor applied to state mechanism for the purpose of rationalization and control."[34]

An observer of the development of constitutionalism in East-Central Europe must admit that the reluctance to experiment with the idea is still widespread in several former socialist countries. No unambiguous reference to the division of power can be found in the constitutions of Hungary or Slovakia. The constitution of Romania and the draft constitution of Albania clearly follow the old-fashioned Soviet model and refer to the parliament as "the highest representative body of the Rumanian people" or "supreme organ of state power"; these constitutions refer to the government only as an organ of state administration, which "ensures the implementation of the domestic and foreign policy." The court is not described as a "power" but is referred to as "judicial authority" or an "organ of justice."[35]

The other countries of former Soviet dominance that have already advanced their constitutional reforms clearly invoke the principle of the division of powers. The constitution of Bulgaria, for example, leaves no doubt as to the drafters' dedication to this most venerated idea of Western constitutionalism; the document declares that "the power of the state is divided between a legislative, an executive, and a judicial branch." Poland's Small Constitution

clearly divides powers between Seym and senate (organs of legislative power), president and council of ministers (organs of executive power), and independent courts (organs of judicial power).[36]

In the group of states that have dropped the traditional socialist idea of parliamentary superiority, the American model of checks and balances enjoys popularity. The concept is followed extensively in the constitutional drafts of most of the republics of the former Soviet Union: Russia, Ukraine, Estonia, Kyrghyzstan, and Azerbaijan. These constitutional drafts also frequently emphasize that balance and equilibrium among the executive and legislative authorities are highly valued attributes of good government.

In the vertical distribution of powers between central and local government, the socialist legacy is still perceptible. Each new "team" in all socialist countries has repeated that the decentralization of decision-making could trigger the recovery of the communist system, but each new reform of the local government has been more illusory than real. Given the lack of proper information at the top, local managers were better equipped to deal with economic, social, and political reality. On the other hand, short of returning to a system of market stimulants, the system of central control could be replaced only by local workers' committees coordinating and supervising projects—a solution that could endanger party dominance. Economic power, once shifted to the working class, would lead to growing political power for the masses.

In contrast to all declarations about the decentralization of power, the traditional socialist system of "dual subordination" of local public administration reserved full control over the decision-making process to central governmental bodies. The local representative organs (councils or soviets) were controlled by higher representative bodies, which could abrogate their acts. They could be dissolved on the decision of parliament. Similarly, decisions of local executive organs were controlled by the higher executive agencies, with ministers at the top. This system was left intact by the draft constitution of Albania and has not been subject to any profound reform in Romania, Bulgaria, or some former Soviet republics such as Kyrghyzstan or Kazakhstan, where the chief local administrative officers (prefects) are government-appointed and represent the central government.[37]

The other new democracies such as Poland, Hungary, Russia, Lithuania, Belarus, and Slovakia tend to give more self-government to territorial administrative units. Local government is guaranteed some budgetary independence and juridical personality, while the central government reserves the right to oversee the legality of the local government's actions. Inhabitants of the territorial units directly elect the representative bodies that have municipal duties and functions of public administration. In most cases, local councils or

soviets elect local executive officers, but in at least one state (Slovakia) the constitution provides that inhabitants of the municipality directly elect the municipal mayor.[38] Forthcoming constitutional acts will favor a truly decentralized model of local administration and will shift some portion of power—attentively guarded by the central government until recently—to territorial units organized on the basis of wide autonomy.

Bicameralism versus Unicameralism

Commenting on the classification of constitutions, C. F. Strong wrote that "a division of modern legislatures into those made up of one House and those having two Chambers is not very real because it would put all the important states in one category, and all the less important states, as for example, Finland and Turkey, in the other."[39] Strong was right that classifying political systems on the ground of bicameralism or unicameralism was not especially fruitful for one simple reason: in the beginning of this century, most states seemed to believe that bicameral legislatures were superior to those with only one house.[40] The rationale for having second chambers of legislative bodies was usually fourfold. First, it was argued that in federal countries such as the United States, Germany, the Soviet Union, or Switzerland the upper houses provide a natural representation of the interests of the separate political entities of these states. Second, good reasons existed for establishing an upper chamber in the states that promoted a policy of regionalism, such as Belgium, Spain, or Italy. Third, bicameralism seemed to be well-grounded in the concept of checks and balances where one chamber was set up to balance the power of the other; some experts believed that the upper chamber might enhance the stability of the political system, providing the executive with an important ally that might help it survive some parliamentary crises.[41] Fourth, the upper chamber survived in countries with strong traditions of bicameralism, such as the United Kingdom. Any one of these reasons could be sufficient to justify the existence of a bicameral system. As McBain and Rogers concluded in 1922, "One of the most interesting features of the new constitutions of Europe is found in the provisions relating to second chambers. Most of the legislatures are bicameral. Only Finland, Estonia, and Yugoslavia have been bold enough to dispense with the time-honored check of an upper, and usually less popular, legislative body."[42]

The position of socialist jurisprudence in the dispute over the rationale for bicameralism was different. Only the first of the above-mentioned reasons seemed to appeal to drafters of communist constitutions. "Whereas the legis-

latures of all the unitary states," wrote Chris Osakwe, "have only one chamber, those of the federal states have at least two chambers—the USSR Supreme Soviet has two chambers, the Yugoslav Federal Assembly has six chambers, and the Czechoslovak National Assembly has two chambers."[43] In fact, aside from these exceptions, socialist lawyers believed that second chambers were either antidemocratic or unnecessary,[44] caused delays in the legislative process, or represented interests of elites, rather than quasi-independent groups.

The creation of the senate in 1989 in a unitary state such as Poland responded to the demand of revolutionary times and was expected to create a framework for further pluralization of the political system.[45] During the disputes of the roundtable, sometimes the second chamber was conceived of as equivalent to "the chamber of labor" and was expected to represent trade unions or self-governmental institutions, as in the Yugoslavian system. Some Polish commentators argued, however, for a more democratic electoral system in which one senator would be elected by 1 million electors and not by the artificially created one hundred electoral districts, two from each voivodship. Some others argued that the weaker position of the senate, in comparison with the Seym, undermined the rationale of this institution.

The drafting process in other postcommunist democracies revealed no clear pattern in selecting either a bicameral or unicameral system. A federal country, such as Russia, or a state promoting regionalism, such as Ukraine,[46] set up bicameral legislative bodies. Unicameral legislatures were favored by most unitary states of the former Soviet Union (Azerbaijan, Estonia, Kazakhstan, Kyrghyzstan,[47] and Lithuania) and some former Soviet European satellites (Bulgaria, Hungary, or Slovakia). The Czech Republic decided to maintain a bicameral parliament, even after federal Czechoslovakia's disintegration. Romania also established an upper house despite reservations of Western constitutional experts, who could hardly find a rationale for the senate in a unitary state that did not clearly recognize the principle of the division of powers. Unicameralism, in short, still prevails in the new postcommunist democracies, and it remains to be seen how effective the few bicameral parliaments set up in the region will be.

Presidential v. Parliamentary System

MAJOR POLITICAL SYSTEMS

It is often claimed that the evolution and application of the division of powers doctrine in the political practice of several countries contributed to the emer-

gence of the two major political systems of presidential and parliamentary government.[48] Although with passing time this dichotomy dissipated into various mixed models, it is still successfully used in comparative analysis.

These two major political systems can be distinguished by several fundamental features.[49] The presidential system, usually associated with the American political experience, is characterized by a concentrated model of the executive. The president is sole executive and the head of state and the head of the government. The legislative branch of government is separated from the executive and elected independently by the people for a set term of office. The cabinet members are appointed by the president and are subject to the confirmation of the legislature, but they do not sit in the legislative branches of the government. They can be called on by the legislature to account for their actions, but they cannot be simply voted down by the legislature's expression of a lack of confidence. On the other hand, the president may call a special session of the legislative assembly or adjourn its meetings, but he cannot dissolve the legislature and hold new elections.[50]

In contrast, a typical feature of the parliamentary model is a dual executive system, with presidents or monarchs as heads of state playing roles of "senior statesmen" or "supreme arbitrators" and prime ministers functioning as politically accountable chief executive officers. If the head of state is a president, typically he is not elected directly by the people but by parliaments or special electoral colleges. With parliament's cooperation, the head of state appoints the head of government, who successively appoints the ministry.[51] In the parliamentary system the two branches of government—legislature and executive—are fused. Ministers usually are members of the parliament and are politically responsible to the legislature, which can vote them out of office without need of a national referendum. In some countries with the parliamentary system, the head of state, in cooperation with the head of government, has the power to dissolve the legislature and call for an election before the end of the parliamentary term. Fusing the executive and the legislature, parliament is a supreme power over its constituent parts. Douglas V. Verney wrote that "the notion of the supremacy of Parliament as a whole over its parts is a distinctive characteristic of parliamentary systems. This may seem to be a glimpse of the obvious to those accustomed to parliamentary government, but it is in fact an important principle, all too often forgotten, that neither of the constituent elements of Parliament may completely dominate the other."[52]

Of the mixed models, the French presidential-parliamentary system seemed to attract significant attention from the drafters of the new constitutions. Although traditionally France leaned toward a parliamentary democracy, the constitution of the Fifth Republic incorporated into the system a

number of features typical of a presidential model. The French constitution retains a dual executive, but the president is directly elected by the people; also, the executive's power has been strengthened and made less dependent on parliament. The president's appointment of the head of the government does not require a formal confirmation by parliament, although parliament may vote the government out of office. Within some limits imposed on the frequency of this action, the president may, in cooperation with the prime minister and the presidents of the parliamentary chambers, dissolve the legislature and call new elections. The president cannot veto acts of parliament, but he may ask for reconsideration of bills he opposes. As a minister cannot sit in parliament, the lines of division between executive and legislature are less blurred than in the parliamentary system. On the other hand, some legislative functions may be shifted to the executive, which legislates in these areas by decrees. As Dragnich and Rasmussen observed, "the result was a hybrid system with elements both of parliamentary and presidential systems."[53]

BASIC FEATURES OF THE PRESIDENTIAL AND PARLIAMENTARY SYSTEMS IN THE POSTSOCIALIST CONSTITUTIONS

Which of the two major systems of government will prevail in the republics of the former socialist bloc? It is still too early to decide but some observations deserve notice. Political systems are rarely designed on paper. They either evolve around strong, charismatic personalities or result from a significant political vacuum created by geopolitical circumstances. This is particularly true of systems based on a strong individual leadership, such as a totalitarian, authoritarian, or presidential system.

The French political system absorbed some features of the presidential model because of the lengthy predominance of Charles de Gaulle. In Germany, the personality of the first postwar chancellor, Konrad Adenauer, significantly affected the evolution of a chancellor democracy.[54] Although Germany lacks a presidential system, the chancellor's position contrasts significantly with the position of prime ministers in other parliamentary democracies. The German basic law makes the chancellor, not the cabinet as a whole, responsible to the Bundestag, and the chancellor's prerogatives have been strengthened by several constitutional mechanisms such as the "constructive vote of no confidence" or the "legislative emergency."[55] The American presidential system has its theoretical roots in the popular theory of the separation of powers and is, in a way, a successor to the model of limited monarchy.[56] Its framework, however, was solidified by the charismatic personalities of early presidents such as George Washington, Thomas Jefferson,

or James Madison. Another example: in 1917 the Bolsheviks, a small, unpopular minority party, seized power and remained in control of a widespread empire, thanks to the personality of Vladimir Ilich Lenin and a significant power vacuum in Russia. Where everybody criticized the rooted tsarist regime, but nobody knew how to rule without it, the Bolsheviks as professional revolutionaries were the most determined to take over power and maintain it regardless of social costs. Taking advantage of an inexperienced and confused society, the Bolsheviks set up the most totalitarian system in the world.

Historical examples might be multiplied and a conclusion reached that, given the social, economic, and political chaos and the political inexperience of electorates, the former Soviet republics will end up with one of the systems based on strong individual leadership. In semirevolutionary conditions strong personalities mushroom, and a political vacuum contributes to the charisma of leaders. A Boris Yeltsin, Leonid Kravchuk, or Eduard Shevardnadze, who otherwise might not politically impress more mature societies, may be free enough to write his own political scenario. Each of them may, and likely will, persuade his electorate that in contrast to all forms of authoritarian rule, the presidential model is just one offspring of a system of democratic and limited government, the other being parliamentarism. This kind of political persuasion may not work with the societies of Central European republics. Given more stable geopolitical conditions and electorates relatively more experienced than in the CIS, the former European satellite countries of the Soviet Union may, and likely will, favor one of the forms of parliamentary democracy.

Analyzed against this background the new constitutional acts break down into several subgroups. The constitutions of several countries make straightforward declarations regarding their political systems. Hungary's constitution in its preamble clearly provides that the state is "a parliamentary democracy." The constitution of Bulgaria states that "Bulgaria is a republic with a parliamentary system of government." Contrarily, the Azerbaijani draft constitution described the state as "a presidential republic." Other new democracies' constitutions do not describe their systems that clearly. In some of them, such as Albania, the Czech Republic, Slovakia, Estonia, and Lithuania, the major features of European parliamentarism may be found. With comparable ease, a constitutional commentator may discover tendencies to incorporate features of the presidential system into the constitutions of Russia, Ukraine, Belarus, and the republics of Transcaucasia, with the Polish interim constitution presenting a sort of a hybrid case with elements of both parliamentary and presidential systems interchangeable.

All the countries examined now have presidents performing the functions

of heads of state; some constitutions, however—the Belarusian and Ukrainian, for example—straightforwardly declare that their presidents are also heads of government or chief executive officers. Lithuanians vested executive powers in both the government and president.

Presidents are elected for four years in Russia and Romania and for five years in the other republics. The interim constitution of Albania and the constitutions of the Czech Republic, Hungary, and Slovakia provide for elections of the president by parliament or an electoral college. The first president of Estonia was elected directly by the people, but the constitution provides an option to elect the president either by parliament or by an "electoral body" composed of members of parliament and representatives of local government. Constitutions of Belarus, Bulgaria, Lithuania, Poland, Romania, Russia, Ukraine, and the republics of Central Asia establish direct presidential elections.

In countries supporting the parliamentary form of government, presidents may submit legal acts passed by parliaments for reconsideration, and, although a second vote results, no qualified majority is needed to adopt these acts. Presidential decrees require countersignature, although some countries (Romania, Poland) list the areas in which the presidents issue decrees without governmental cooperation.

The right to dissolve parliament may be limited, as in Hungary where the president can dismiss parliament only if it withdraws confidence in the government four times in a year or it fails to elect a prime minister in forty days; this right may be extensive, as in the case of Poland, where it may be exercised after four attempts to form a government, or as the result of a no-confidence vote, or if the budget is not adopted in three months.

In most of the countries favoring parliamentarism, chief executive officers are appointed by presidents with the approval of parliaments. Executive officers are responsible to legislative bodies and may be recalled by them. The power to designate a prime minister, however, may be entirely vested in parliament (the Hungarian case) or, as in the Polish variant, may interchangeably pass from parliament to the president and vice versa.

Presidential republics give their presidents the right to veto legislative acts, although such vetoes may be overridden by parliamentary majorities of two-thirds. Again Poland presents more unconventional positions, on the one hand, attempting to shift more executive functions from the president to the government, on the other hand, granting the president the right to veto legislation with a qualified majority needed for overriding action.

The presidents in "presidential republics" may have wide authority to

dissolve the parliament (Russia) or, following the French concept of the separation of powers, may be deprived of this prerogative (Belarus, Ukraine, Kazakhstan, Kyrghystan).[57] Also the degree of subordination of prime ministers and ministers to presidents vary. Usually they are appointed by the president with the consent of parliaments but the right to dismiss them may be either entirely vested in the presidents or shared with legislative bodies. For example, the Belarusian president creates and abolishes ministers; in Ukraine the prime minister is just a deputy to the president. The Russian president appoints the prime minister with the State Duma's consent, but his decisions to nominate or dismiss ministers do not require any approval from the legislature. He may also disagree with the Duma's vote of no-confidence, and in the result of a second successful attempt to vote the government down he has either to dismiss it or to dissolve the Duma. The power of the Polish president is not that extensive; still in cooperation with the prime minister he can dismiss ministers without consent of the Seym. Most of the constitutions do not make ministerial positions incompatible with those of deputies; the others (Bulgaria, Belarus) state clearly that the ministers cannot seat in the legislative bodies.

Although many countries of this region established offices of ombudsman, the effectiveness of monitoring executive performance differs highly even in the countries with clear tendencies to develop institutions typical of parliamentary democracy. Parliaments' rules of procedures are not clear; in some countries, Russia for one, they were defined in presidential decrees, in some others they are adopted by parliaments with some freedom left for parliamentary chambers or even parliamentary parties to adopt their own internal ordinances. The distribution of power among party caucuses and groups, roles played by whips and majority and minority leaders, internal party discipline, vary as well. David Olson observed, "While the general practice seems to be proportionality, i.e. parties share committee seats in ratio to their strength in the chamber, there are many variations on, and departures from, that general principle. The single most important exceptions concern committee chairs: in some parliaments, the party forming the government-of-the-day or the multi-party coalition would hold all chairmanships, as in both the Czech Republic and in Belarus, while in others, all the larger parties share those committee leadership positions, as in Romania. The most startling departure from proportionality has been reported in Slovakia, in which the governing coalition, as of early 1995, had wholly excluded opposition parties from at least some committees."[58]

Generally, diversity of institutional experiences, even within the countries

with highly democratized parliaments, startled the observers who supposed that borrowing and sharing rather than experimenting will be a typical approach of the constitution drafters in this region's countries.

Judicial Enforcement of the Constitutions

ORIGINS AND MAJOR MODELS OF JUDICIAL REVIEW

Most studies of the origin of judicial review indicate that this institution surfaced in the United States at the beginning of the nineteenth century and was incorporated into constitutional practice by the courts, which had already displayed significant activism. This statement, although correct in general, requires some explanation. The idea that the courts have the right to review the constitutionality of laws, which found its judicial pronunciation in the famous opinion of Chief Justice John Marshall in *Marbury* v. *Madison* (1803), has its antecedents in the doctrine of natural law, a doctrine which implies that the law has a hierarchical structure and that people have the right to disobey and nullify the lower law if it does not correspond with the higher one.[59] To transform this vague idea into the institution of judicial review, however, several conditions had to be met.

First, to avoid arbitrariness, the reviewing institution's powers of checking the consistency of the hierarchic system of law had to be separated from the powers to make law. The organ making law could not review the correctness of the law. The fairness of the system required adoption of the division of powers.

Second, the reviewing institution needed a well-refined supreme law that could serve as a precise background for the evaluation of inferior law. The vague concept of natural law was poorly suited to play this role. The supreme law could not be, as in the English system, a body of principles or maxims drawn from legislation, judicial precedence, custom, conventional rules, or the opinions of writers of authority. To shield judges against any assumption of arbitrary power, the development of judicial review required an authoritative document, a written constitution.

Third, as Alexander Hamilton wrote in *The Federalist,* "no legislative acts, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves."[60] Thus, the principle of the supremacy of the U.S. Constitution became a sine qua non of the development of judicial review.

Fourth, the Constitution had to guarantee its own rigidity. The amendment process had to be more difficult and formal than the regular legislative process. The excessive flexibility of the supreme law, which could be amended freely by the legislature, would make judicial review useless or ineffective.

Fifth, the establishment of the system of constitutional review implied the existence of a judicial system in which the judges would be prepared to go beyond concrete adversary litigations and exercise judgments effecting general legal policy of the state.[61]

These conditions were met for the first time in the United States, and it was natural that the United States pioneered in subjecting its legislation to judicial scrutiny. In accordance with American theory and practice, all acts of Congress, state constitutions, state legislative, governmental, and administrative acts, and international agreements are subject to judicial review.

The American model is often described as a decentralized or defused system of concrete review. Such a system allows all courts the right to review the constitutionality of laws. Furthermore, it is recognized as concrete or incidental because the constitutional issue can arise only as incidental to another litigious issue.[62] This model has been adopted by some South American countries such as Argentina and Mexico, by former British colonies such as Australia or India, by the Scandinavian states and by Japan and Greece, among others.

Nineteenth-century Europe was reluctant to experiment with judicial review. The first attempts to incorporate this institution into constitutions came after World War I in Austria. The Austrian model, introduced by the Austrian constitution of 1920, is often described as a centralized or concentrated and abstract model.[63] In contrast to the American model, the power of review in the concentrated system is vested either in a country's supreme court or in a special court. This review can be initiated through independent action raising an abstract issue of constitutionality. Such a model was introduced into the practice of many countries with civil law traditions. In Spain, the Tribunal of Constitutional Guarantees was created under the constitution of 1931,[64] and the Italian constitutional court was established by the constitution of 1948. In more recent years, some countries with legal systems that have emerged from common law roots, such as New Guinea or Uganda, began to experiment with the concentrated system of review.[65]

Besides these two well-known models, a variety of other types of constitutional review have a political rather than judicial character.[66] Political control of the constitutionality of law may be "internal" if exercised by an organ of the central legislative body. Such was the case of the Soviet Union, where the right

of review was exercised by the Presidium of the Supreme Soviet. Political control may be "external," as is the case in France, where the right to review legislation is vested in a special quasi-judicial body, *Conseil Constitutionnel,* composed of nine members appointed for nine years by the president of the Republic, the president of the assembly, and the president of the senate. Former presidents of France are made ex officio members of the council. The constitutional council must review organic laws before their promulgation. In addition, the council reviews other laws if they are submitted before promulgation by the president of the Republic, the prime minister, the president of one of the parliamentary chambers, or by any sixty members of the national assembly or senate. Political control may be "mixed" if exercised by the special organs composed of deputies and extraparliamentary experts on constitutional law. Mauro Cappelletti explained this model through the example of the constitution of the Romanian People's Republic:

> The recent Rumanian Constitution of 1965, although not admitting to judicial control such as that adopted in 1963 Yugoslavia . . . had instituted within the Parliament itself a Constitutional Committee, elected by Parliament. Up to a maximum of a third of the total number of its members, the Committee may be composed of specialists who are not members of Parliament. The Committee under Article 53 of the Constitution has the task of putting before the "Great National Assembly" reports and opinions on the constitutionality of the bills as indicated by the rules of Parliamentary procedure.[67]

JUDICIAL REVIEW IN THE NEW EAST-CENTRAL EUROPEAN CONSTITUTIONS

Socialist doctrine traditionally did not recognize the need for judicial review. In the early 1960s the attitude toward judicial control began to change, and Yugoslavia for the first time in 1963 began setting up constitutional courts. Poland had the tradition of administrative adjudication, which dated back to the interwar period when the Polish constitution of March 17, 1921, announced the establishment of the supreme administrative tribunal and local administrative courts.[68] In 1986, Poland adopted the statute on the constitutional tribunal, establishing a precedent that had been followed by virtually all new European democracies until more recent years. Constitutional review became the greatest novelty of the postsocialist world, and selection of a model of judicial review applicable to the legal traditions of the postsocialist countries became one of the most controversial issues in the constitutional debate across East-Central Europe.

To the disappointment of many American constitutional experts, the

American decentralized model did not significantly inspire the constitutional drafters in the former socialist countries. Several factors contributed to the general preference to adopt one of the well-tested European models.

First, the American decentralized model is rooted in the concept of constitutional supremacy. The idea that the constitution should be drafted not by regular legislative bodies but by special conventions to which the people delegated a constituent power is an idea that originated in the United States. The American Constitution also introduced a relatively rigid process of constitutional amendment. The rigid character of the U.S. Constitution, combined with the principle of its supremacy, implied the right of the courts to disqualify any repugnant laws. The same conclusion cannot be drawn per se from the fundamentals of systems that fail to place the constitution above parliament.

Second, the diffused system has developed from the concept of constitutional checks and balances. In this system it is natural that one power is balancing, controlling, and supplementing the functions of the other, although none can take over all of the other's powers. The concept of a diffused system of judicial review of legislation corresponds well with this model. It does not fit a system that implies a strict separation of powers, such as that provided by the French model. In addition, the countries that emphasize the superiority of the legislative assemblies hardly can agree with the logic of the system that provides for control of the "superior" power by the "inferior" courts.

Third, the decentralized and concrete system vests in the regular courts only the power to nullify the law inter partes and extends the validity of the courts' decision on other cases through the principle of stare decisis. As Cappelletti wrote,

> Since the principle of stare decisis is foreign to civil law judges, a system which allowed each judge to decide on the constitutionality of statutes could result in a law being disregarded as unconstitutional by some judges, while being held constitutional and applied by others. Furthermore, the same judicial organ, which had one day disregarded a given law, might uphold it the next day, having changed its mind about the law's constitutional legitimacy. Differences could arise between judicial bodies of a different type or degree, for example between ordinary courts and administrative tribunals, or between the younger, more radical judges of the inferior courts and the older, more tradition conscious judges of the higher courts. This is notoriously what happened in Italy from 1948 to 1956 and what continues to happen on a large scale in Japan. The extremely dangerous result could be a serious conflict between the judicial organs and grave uncertainty as to the law.[69]

The U.S. Supreme Court hears appeals from the most important constitutional decisions and under the principle of stare decisis its rulings are binding on all other courts. To reach the same effect in the civil law system, the Supreme Court or the highest court would have to be given the right of ruling *erga omnes*. The effect possible in the U.S. pyramidal structure of the court system, however, might be difficult to obtain in the system where several high courts for different areas of law coexist.

Last, the diffused system requires judiciary qualifications usually lacked by most civil law judges. Legal education in most civil law countries is offered at the undergraduate level and is less oriented toward professional training than is the case in the common law system. Civil law career judges are well-trained to follow rules provided in the codes and to analyze the logical consistency of the system. Focusing on the unchangeable core rather than on mutable elements of the legal system, civil lawyers are not prepared to offer the policy-minded analysis required by a constitutional review process. Even if it is agreed that the role of common law judges as lawmakers has been reduced, the degree of judicial activism, particularly in the United States, far exceeds the scope of discretion traditionally reserved for European judges.

Some countries that traditionally fall within French legal influences, such as Romania or Albania, might prefer a sort of political rather than strictly judicial review.[70] The other East-Central European states and some of the former Soviet republics seem to be attracted to the German model, which is viewed as an example of a centralized "mixed" system, combining some elements of both concrete and abstract review.

The German federal constitutional court has gained a reputation as one of the world's most energetic constitutional courts.[71] Its scope of review is impressive. The court can be reached through five major channels. First, it has the power of constitutional review of the rights and duties of federal organs.[72] Second, it has a right of abstract review of the formal and material compatibility of federal law or Land law (the law of the states that are federal components of Germany) with the basic law and the compatibility of Land law with federal law. The court acts on the request of the federal government, a Land government, or of one-third of Bundestag members.[73] Third, the court has right of concrete review. If any court rules as unconstitutional a law the validity of which is relevant to concrete adversary action, the proceeding before that court must be stayed and a decision obtained from the federal constitutional court.[74] Fourth, the federal constitutional court rules on the compatibility of political parties with fundamental democratic principles, recognized by the basic law.[75] Fifth, the court hears the constitutional complaints of individuals whose rights have been violated by public authority.[76]

It is widely believed that the mixed character of the German system and individuals' relatively direct access to the court enhance the democratic character of a traditional centralized model. While some countries—Poland, for example—still substantially curb the scope of judicial review, other countries such as Russia or Ukraine extend the scope of judicial review almost as willingly as the German court.[77]

The major issues that still generate considerable controversy are the constitutional courts' right to hear individual complaints and parliament's right to overrule the constitutional courts' decisions. Easy access to the constitutional court is an important part of public legal and social education. Yet, vesting the right to petition the court in all individuals whose constitutional rights have been violated would either immensely increase the court's workload and burden its budget or force the court to be highly selective.

In addition, the right of the court to invalidate acts passed by the legislative body is incompatible with the legislature's superior status. This status is still recognized by several East-Central European countries; consequently, the right of the constitutional court to rule decisively on the constitutionality of all laws, including statutes, requires either elimination of the principle of legislative superiority or elevation of the court's status to a special constitutional organ. This status would place the constitutional courts above all other judicial structures. As of 1996 development of the East-Central European system of constitutional enforcement is in process, and the German model of judicial review seems to attract a great deal of attention. Still, the extent to which the new democracies will duplicate this system is hardly predictable.

Comparative Flexibility of the New Constitutions

At the end of the nineteenth century the traditional distinction between written and unwritten constitutions was subject to criticism. Both "kinds" of constitution have their written and unwritten parts. Single-framework documents, called "written constitutions," become operational through the body of implementing laws, interpretations, decisions of courts, and constitutional practices. Countries with "unwritten constitutions" also have some authoritative documents that determine government's forms and functions. In 1880, Thomas M. Cooley wrote,

> A constitution may be written or unwritten. If unwritten, there may still be laws or authoritative documents which declare some of its important principles; as we have seen has been and is still the case in England. The weakness of an unwritten constitu-

tion consists in this, that it is subject to perpetual change at the will of the law-making power; and there can be no security against such change except in the conservatism of the law-making authority, and its political responsibility to the people, or, if no such responsibility exists, then in the fear of resistance by force.[78]

In 1884, James Bryce proposed a new classification of constitutions as "flexible" and "rigid." The former were to be "promulgated and repealed in the same way as ordinary laws"; the second were to "stand above the laws of the country which they regulate."[79] Constitutional writers quickly adopted Bryce's terms, although his criteria for the distinction between them have been widely challenged. First, in Bryce's description, both types of constitutions share some features, most notably stability.[80] Second, Bryce had a distinctive tendency to mix up flexible and unwritten constitutions. He admitted the rigidity of almost all constitutions adopted at that time. Kenneth C. Wheare observed that "a system of classification which places almost all the Constitutions of the world in one category of 'rigid' and leaves only one or two in the other cannot take us very far."[81] Third, Bryce's observation that a flexible type of constitution was particularly appealing to an aristocracy and was most suitable for a state interested in territorial expansion lacks serious support.[82]

Several scholars proposed different criteria. Wheare, reinforcing some of Bryce's comments, suggested using the terms "rigid" and "flexible" "not according to whether or not they require for their amendment a special procedure which is not required for ordinary laws, but according to whether they are in practice easily and often altered or not."[83] Leslie Wolf-Phillips made another attempt to refine the classification.[84] He claimed that "no constitution will be completely 'written' or completely 'unwritten,' completely 'codified' or completely 'uncodified,' completely 'rigid' or completely 'flexible.' The aim will be to establish the *degree* of the classificatory attribute."[85] This refinement seems to fit my purpose here. Indeed, it makes it possible to distinguish the question asked by Wheare of whether it is actually hard to amend a constitution—a question of a political nature—from the question of whether the constitution in the intention of the drafters was made easily amendable.[86] At the more recent stages of constitutional works in East-Central Europe, the question of whether the new constitutions will be subject to frequent change cannot be answered satisfactorily. Special procedures or requirements for constitutional amendment, however, lend themselves well to comparative analysis.

In fact, an advocate of the claim that the ease or frequency with which a constitution is amended depends less on legal provisions that proscribe the method of change and more on actual political circumstances that accompany

the change would find a perfect example in socialist constitutions. These constitutions gained the reputation of flexibility regardless of their relatively rigid provisions on amendment and change. The constitution of the Soviet Union and most of the constitutions of the satellite people's republics required a two-thirds or three-fifths majority of parliament to amend.[87] The fact is, however, that they were amended at will since socialist representative bodies were totally controlled by national communist parties.

AMENDING THE POSTSOCIALIST CONSTITUTIONS

Postcommunist constitutional reform changed this situation radically. Political leadership of the new republics experienced a small shock in that the procedures for amending the constitutions which had been without meaning suddenly began to give constitutional texts their intended rigidity. The requirements of a qualified majority needed for constitutional revision brought the process of constitutional reform in Hungary, Poland, and the Republic of Czechs and Slovaks to a virtual standstill. Given the fractionalization of an immature electorate inexperienced in coping with the mechanisms of political pluralism, a similar result may occur in the other new democratic republics.

So far, a general tendency is occurring to incorporate rigidity into the new constitutions. Notwithstanding warnings that each transitory period requires a certain degree of flexibility, the constitutional drafters in virtually all new democracies seem to believe that their constitutions will stand unchanged for a relatively long time. The following examples of recently adopted constitutions clearly show that their framers wanted the amending process to be difficult.

In Bulgaria, the right to initiate constitutional amendments may be asserted by one-quarter of the national representatives and by the president. Any motion to this effect must be considered by the national assembly no earlier than one month and no later than three months after it has been filed. The national assembly, after three rounds of balloting on different days, may pass a law on amending the constitution by a majority of three-quarters of the national representatives.[88] A new constitution may be adopted only by a special constituent body, the grand national assembly, which consists of two-thirds more representatives than the regular national assembly.[89]

In Romania, constitutional revision can be initiated by the president of the government's recommendation, by at least one-fourth of the deputies or senators or by at least a half-million citizens. Citizens who initiate the revision must come from at least half the country's counties; in each county and in Bucharest municipality, at least 20,000 signatures supporting the initiative must be

obtained. The draft of the revision must be approved by a two-thirds majority of each chamber's members, and the revision itself is subject to public approval by referendum. Provisions of the constitution concerning the national, independent, unitary, and indivisible character of the state, the republican form of government, territorial integrity, the independence of the justice system, political pluralism, and the country's official language cannot be the subject of revision.[90]

The constitution of Estonia vests the right to initiate amendments in one-fifth of parliament's deputies and the president. The amendment may be adopted by a referendum called for by a decision or a vote of three-fifths of parliament, repeated in two successive sessions and after three readings; the interval between first and second readings is to be at least three months, and the interval between second and third readings at least one month.[91]

Without going into details of other constitutional drafts, I should observe that the wisdom of the amendment process requires that a constitution be amendable, otherwise a whole new document would have to be adopted. The pluralization of the political spectrum in the new East-Central European democracies, combined with the built-in rigidity of the new constitutions, may freeze the natural process of constitutional development and, despite the intentions of the drafters, may endanger rather than strengthen the new constitutions' stability.

6

CONSTITUTIONAL RIGHTS, FREEDOMS, AND DUTIES

Origins of Different Approaches to Constitutional Protection of Human Rights in American and European Doctrines

DRAFTING THE FIRST BILLS OF RIGHTS

The concept of people's natural rights has its foundations in antiquity and was developed in many political and legal theories of the Age of Enlightenment. Although many ideas on the origin of human rights originated in continental Europe, the belief that a well-governed society should have one framing document which provided extensive coverage for citizens' rights and freedoms was deep-seated in the British tradition.[1] At the end of the eighteenth century this idea was supported by the American constitutional experience.

The formation of the U.S. Bill of Rights was an uneasy process. Although the declarations of rights were incorporated into the constitutions of several states, the Philadelphia Convention adopted the federal Constitution without a bill of rights annexed to it. The motion of George Mason and Elbridge Gerry to include a bill of rights was opposed by Roger Sherman on the ground that "the State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient."[2] The argument that Congress should be trusted in its intention to preserve the rights of the people was convincing enough for Convention delegates, who unanimously (voting as state units) opposed a request to form a bill of rights committee.[3]

The struggle for ratification of the Constitution quickly proved that the Convention had erred in its evaluation of public sentiment. The demand for a bill of rights was widespread, and the lack of one became a major point in the Anti-Federalist attack on the Constitution.[4] Thomas Jefferson, in his letters from France, strongly argued that the absence of a statement of rights might result in the "elective despotism" of Congress. James Madison was generally

in favor of a bill of rights, although he did not believe its omission to be a major defect of the Constitution.[5]

Discussing the historical background of his draft of the Bill of Rights, Madison returned to precedents such as the American Declaration of Independence, state constitutions and bills of rights, ratifying conventions, and British constitutional documents: the Magna Carta of 1215, the 1628 Petition of Right, and the 1689 Bill of Rights.[6] Madison admitted that the concept of a bill of rights originated from attempts to limit the power of the British Crown. He claimed, however, that Americans had to work out a more advanced bill because the British constitution did not secure freedom of the press and liberty of conscience, rights highly esteemed in the United States.[7] Madison made no reference to the French constitutional experience, and, with the exception of the consular convention and the letter to the French national assembly announcing Franklin's death, France was hardly mentioned during the first year of debate in the first U.S. Congress.

The adoption of the French Declaration of the Rights of Man and Citizen on August 27, 1789, almost two and one-half years before ratification of the U.S. Bill of Rights on December 15, 1791, has often confused researchers looking for the origin of the constitutional Bills of Rights. The passage of the French document before its American counterpart trivialized the American contribution to French constitutional development. The idea of a bill of rights—which could be used as a preamble to a constitution—was, however, American, and Americans translated it into the idea of a constitution as a single document providing a basic law superior to any legislative act and different from mere statutes.[8]

It is unquestionable that the preambles of American state constitutions, such as Virginia, Massachusetts, and Maryland, as well as their prototype—the American Declaration of Independence—strongly influenced the authors of the French Declaration.[9] Yet the record shows that drafting action on both documents almost paralleled each other. On May 4, 1789, a day before the French Estates-General met for the opening plenary session in the great Salle des Menus Plaisirs, Madison gave notice to Congress that he intended to bring up the subject of constitutional amendments.[10] He submitted his draft on June 8, and Lafayette presented his proposal to the French assembly on July 11.[11] On August 13 the U.S. House of Representatives resolved itself into a Committee of the Whole and discussed the report of the Committee of Eleven, to which the subject of the amendments was referred. The special Committee of Three (Benson, Roger Sherman, and Theodore Sedgwick) submitted the report with the third draft of the amendments on August 24–25, two days before the French assembly adopted the Declaration of the

Rights of Man and Citizen.[12] The amendments passed Congress on September 25, 1789.

The American Bill of Rights was ratified in 1791, but the drafting process was completed before the adoption of the French Declaration. Thus, the draftsmen of the American version of the bill were not directly influenced by the final text of the French document. They may have been familiar with the early drafts of the Declaration and inspired by the French constitutional debates, but a thorough examination of the record does not confirm that notion. True, the American public was enthusiastic about the French Revolution, and the Founding Fathers were well-informed about the European events. However, no evidence can be offered that they drew from French constitutional thought.

THE AMERICAN DECLARATION OF INDEPENDENCE AND THE FRENCH DECLARATION OF THE RIGHTS OF MAN AND CITIZEN

Because of the clearly parallel development of the French and American documents, the search for interdependencies is unfruitful. For an individual attempting to discover the roots of present and future differences in European and American concepts of human rights, a closer look at the French Declaration and both the American Declaration of Independence and American state and federal bills of rights is warranted. It is where confluence began and where similarities and differences are revealed.

For example, it has often been advanced that the French Declaration attached equality to liberty and stressed the importance of this conjunction more notably than did the U.S. Declaration of Independence or Virginia's Bill of Rights.[13] In George Lefebvre's words, "by bringing the resounding collapse of privileges and feudalism, the popular revolution highlighted equality as the Anglo-Saxons had not done."[14] Article 1 of the French Declaration proclaims that "men are born free and equal in rights."[15] Equality is also referred to in several subsequent articles.[16] The Declaration guarantees equal rights in courts, equal access to governmental positions, and fiscal equality. Even with all these equalitarian provisions, however, equality, although emphasized more firmly than in the Anglo-American doctrine, "holds a lesser place than freedom in the Declaration."[17]

Among the fundamental principles of 1789–91, liberty is by far the most important right. Men are declared free from arbitrary persecution and free to communicate their opinions, provided they respect the same liberty of others. Liberty, property, security, and resistance to oppression are recognized as fundamental individual rights stemming from human nature.[18] Equality does

not figure among these sacred and imprescriptive rights. The French assembly focused on condemnation of the unequal estates and privileges of minorities, and following Sieyès's argument, decided not to include social equality among the rights protected by the Declaration. Contrary to the second French constitution of 1793, which stressed the significance of social equality, the majority of the constitutional assembly in 1788–91 was satisfied with the protection of equal freedom. The right of "equal freedom" was formulated more clearly in the constitution of 1791 than in the Virginia Bill of Rights. On the other hand, the Virginia declaration placed greater emphasis on freedom, the frequency of elections, and on trial by jury, and it was more concrete in its warnings against excessive bail and more explicit in its reference to general warrants, suspension of laws, and standing armies.[19]

It has often been proposed that a number of deputies of the French assembly, led by Robespierre, were dissatisfied with the insufficient treatment of religious liberty and religious toleration in the French Declaration. The mild reference to religious toleration has been recognized as a failure of the Voltaireans during this phase of the Revolution. As a result of these sentiments, at the end of 1789 and in 1790 the French assembly adopted several acts that drastically limited the dependence of the French Catholic church on the pope and that tied the clergy to state policy.[20]

Contrarily, the American Declaration of Independence referred to the Creator, and the Virginia Bill of Rights was more explicit than the French Declaration in reference to Christian and moral virtues.[21] Generally, Americans were more dedicated to religion than the French, but they also were determined not to grant priority to any particular creed. France remained a predominantly Catholic country, but "the air of atheism," amounting sometimes to hostility toward religion, troubled Americans. Commenting on this trend, John Adams admitted that the French drew more from their own philosophy than from American experience. In a letter to Richard Price he concluded, "I own to you I know not what to make of a republic of thirty million atheists. . . ."[22]

As is often suggested, the populist character of the French Declaration of Rights is more apparent than real. The American Declaration of Independence states that governments derive "their just powers from the consent of the governed." The French text is more explicitly Rousseauistic by proclaiming that "law is the expression of the general will."[23] However, both Declarations are Rousseauesque only in these phrases. As manifestoes of developing liberalism, they proclaim a victory for the philosophy that recognized an individual, man or citizen, to be a subject of fundamental rights. Individual autonomy was proclaimed as being worthy of constitutional protection; an

individual was declared the best judge of his own well-being, and the interests of the community were recognized as the sum of individual interests.[24] The framers of both Declarations followed Rousseau's concept of the general will only by name. The American Declaration of Independence focuses on the reasons for which the thirteen original states severed their colonial allegiance. The interpretation of the principle of the popular origin of power is left to constitutional regulation, which fully recognizes a representative form of government. The French Declaration, which was itself conceived as a preface to their constitution, more explicitly explains the idea of representation. For most deputies, sovereignty was indivisible and inalienable, but the sovereign people could exercise their power through elected representatives. Sieyès's opinion, that deputies were representatives rather than simply "intermediaries," prevailed in the assembly. He stressed that the majority of them had the right to decide, and that the will of the majority meant the sum of the individual wills of its members. It was Sieyès who, in his popular pamphlet *Qu'est-ce le Tiers Etat?* (What Is the Third Estate?), argued that "individual wills are the sole elements of the general will" and that "it is useless to talk reason if, for a single instant, this first principle, that the general will is the opinion of the majority, and not of the minority, is abandoned."[25]

The resemblance between the French and American Declarations is remarkable. Both acts recognize that the organization of a society should be based on principles of liberty, individual autonomy, representative government, and the power of the majority combined with the rights of minorities. With all these similarities, however, both Declarations differ in the emphasis given to particular rights. A close comparison of the texts does not deprive the Declaration of the Rights of Man and Citizen of its special French character.

THE FRENCH DECLARATION AND THE AMERICAN BILL OF RIGHTS

A careful examination of the French Declaration and the American Bill of Rights reveals the special quality of both documents. Both of them emphasize "freedoms from" and on the rights in the criminal process, but while the U.S. Bill of Rights is solely oriented to the protection of individual rights, the French Declaration makes meaningful reference to "the common good." The phrase that "social distinctions may be based only upon general usefulness" was later replaced in the 1793 Declaration of Rights of Man and Citizen by a clearly positive commitment of the state that "the aim of society is a general welfare."[26]

Analyzed against this background, the American Bill of Rights is a pragmatic act, deprived of theoretical divagations on the meaning and limitations

of liberty, interrelations between liberty and equality, and interdependencies between liberty and the idea of limited government. The American document is simply a list of civil liberties,[27] or "negative rights," which the individual citizen may assert against the government. As Judge Richard A. Posner stated, "Our Constitution is a charter of negative rather than positive liberties. . . . The men who wrote the Bill of Rights were not concerned that the federal government might do too little for the people, but that it might do too much to them."[28]

In all, the French Revolution generated a multiplicity of emotions and focused public attention on the struggle for civil rights and liberties. In time, however, when the U.S. Supreme Court began working out a system of enforcement of constitutional rights, French constitutionalism seemed to play down the role of rights. The French constitution of 1795 supplemented the Rights of Man with nine paragraphs on the duties of the citizen, while subsequent Napoleonic constitutions were more pragmatic, dropping the sections on the Rights of Man along with much of the ideology that had sanctioned them.[29] For decades, the French Declaration remained a philosophical manifesto of the Western world. Its vital influence stemmed from the assertion that "all men are born free and equal in rights" and that their rights are inalienable. Americans, however, seemed to monopolize the export of the ideas of constitutional protection and judicial enforcement of human rights.

Bills of Rights in Modern Constitutions

In the nineteenth century, recognition of the fundamental rights of man made an impression on the development of European constitutionalism.[30] The first European constitutions[31] seemed to follow the American pattern in providing the list of typical "Thou Shall Nots." For example, the constitution of Sweden, adopted in 1809, stated in a single article:

> The King . . . shall not deprive anyone nor cause anyone to be deprived of life, honor, personal liberty, or well-being unless he has been legally tried and condemned; he shall not deprive anyone nor permit anyone to be deprived of any real or personal property without trial and judgment in accordance with the provisions of Swedish law; he shall not disturb or cause to be disturbed the peace of any person in his home; he shall not banish any person from one place to another, he shall not constrain nor cause to be constrained the conscience of any person, but shall protect every-one in the free exercise of his religion. . . .[32]

The constitution also guaranteed, within the limits determined by the law, freedom of the press and prohibited the establishment of a preventive censorship.[33] Similar civil liberties were listed in the constitution of Spain in 1814 and in a separate chapter in the constitution of Norway of 1814.[34] The drafters of the constitution of Belgium of 1831 moved the chapter on "Belgian Citizens and Their Rights" to the very beginning of the text and made a detailed list of rights.[35] Bills of rights also were incorporated into the constitutions of Liberia of 1847, the kingdom of Sardinia in 1848, Denmark in 1849, Prussia in 1850, and Switzerland in 1874. After World War I, the bills were adopted by most of the new European states; Latin American and Asian states followed suit.[36]

A careful examination of the basic laws adopted in the second half of the nineteenth century reveals the great number of differences in the American and European approaches to fundamental rights. As argued above, the differences between the American Bill of Rights and the French Declaration of the Rights of Man and Citizen are noteworthy, and through the century following the American and French revolutions, Europeans slowly but steadily began working out their own concept of fundamental constitutional rights.

Despite numerous efforts, Europeans did not adopt any successful model of constitutional review until the second decade of the twentieth century.[37] Because of that, the idea of the "inalienability" of constitutional rights remained a philosophical abstraction in Europe.[38] While in the United States the opinion prevailed that rights are not a gift from society but natural or inherent, Europeans worked out the concept of rights granted by constitutions.[39] As Wiktor Osiatyński correctly observed, "another important difference between American and European constitutional orders which is worth discussion is that the American order rests on the principle that power is a grant of freedom and the European order rests on the principle that freedom is a grant of power."[40]

European constitutions of the nineteenth century declared that rights are constitutionally protected within the boundaries of the law. The constitutional guarantees of rights meant protection against arbitrary governmental decisions, but not against limitations imposed by legislation. At the time, Europeans were increasingly inclined to accept the concept of the division of powers, but they believed that powers are not equal and that legislative power, being supreme, may judge the limitations of fundamental rights. Thus, European constitutions provided elaborate lists of rights that might be exercised only "in the manner expressly provided by law."[41]

Second, following the traditions of French constitutionalism, European

basic laws put more emphasis on the social duties of citizens and became replete with positive rights that individuals might claim against governments. Among other obligations, citizens had military duties, the duty to educate children, and the duty to perform personal service for the state and the municipalities—for example, to accept honorary offices.[42] While the U.S. Constitution did not expect that government would provide economic and social benefits, constitutions of the European welfare states began imposing numerous positive obligations on governments. "It shall be the duty of the state and the municipalities—declares the Constitution of the German Reich of 1919—to maintain the purity, health, and social welfare of the family. Families of many children shall have the right to compensatory public assistance."[43] "The state—the constitution of Finland of 1919—shall support, or, in case of need shall give grants-in-aid to, institutions for instruction in the technical professions, in agriculture and its allied pursuits, in commerce and navigation, and in the fine arts."[44] As Louis Henkin concluded, "economic-social rights generally are not constitutionally protected [in the United States]. The United States has set an example of commitment and growth in civil and political rights, and has followed Europe in respect of economic-social rights; although President Franklin Roosevelt proclaimed that the commitment of the United States to 'freedom from want' would be equal with other freedoms, economic-social rights have not achieved constitutional status in the United States."[45]

Third, Europeans showed a greater amount of sensitivity than Americans to the idea of the equality of rights. The U.S. Constitution in its original version did not guarantee universal suffrage or equal rights for women, and it did not prohibit slavery. It was the French Société des Amis des Noirs (The Society of the Friends of Blacks), established in 1788 and presided over by Condorcet, which disseminated the idea of the abolition of not only the slave trade, but of slavery itself. In fact, it was Denmark that was the first European state to abolish the slave trade by a royal order of 1792; after that date, the Congress of Vienna in 1814 was followed by most European states prohibiting such traffic. And before the American Nineteenth Amendment became the law of the land on August 26, 1920, many European countries such as Finland (1906), Norway (1913), Denmark (1915), the Netherlands (1917), the Soviet Union (1917), and Austria, Czechoslovakia, Germany, Poland, and Sweden (1920) enacted women's right-to-suffrage legislation.

The American concept of fundamental constitutional rights has served as a useful model for adoption since this century's second decade when the U.S. Supreme Court began actively developing the philosophy of the First and Fourteenth Amendments. The American interpretation of human rights be-

came particularly influential in several major areas such as due process of law and, more generally, in rights of criminal process, the right to freedom of expression, and the right to privacy. After a modest beginning, American courts began to produce a significant number of decisions in relation to the right of equality of treatment without unfair discrimination.[46] Americans also had a remarkable impact on the development of the body of international human rights law. As Louis Henkin observed, "A new wave of influence traceable to the United States came with World War II. President Roosevelt encapsulated the idea of rights in his Four Freedoms address, and the United States and its Western Allies incorporated the idea of rights into the aims of the Second World War, into the Nuremberg Charter and the UN Charter, and then into the Universal Declaration of Human Rights and the series of international covenants and conventions that followed."[47]

Thus, at the bicentennials honoring adoption of the first American and European constitutions, the demands for enforceable bills of rights became common at both the national and international levels.

The Socialist Concept of Constitutional Rights

Bills of rights also became typical components of socialist constitutions. Experts agree that the constitutions of the socialist countries had a common core, which, among other elements, contained a lengthy list of fundamental rights.[48] Chris Osakwe wrote, "To demonstrate the superiority of socialist democracy over bourgeois democracy, to prove to the world that socialism holds personal freedom and individual liberty in high esteem the provisions in the socialist bill of rights contain a glowing tribute to all the greatest freedoms of our time."[49]

Socialist bills of rights were characterized by four basic features. First, next to rights and freedoms, they contained elaborate lists of duties. "The exercise of rights and freedoms—proclaimed the Soviet Constitution of 1977—is inseparable from the performance by the citizens of duties."[50] Thus, citizens were obliged to observe the constitution and the laws, comply with standards of socialist conduct, uphold the honor and dignity of the socialist state, observe labor discipline, combat misappropriation and squandering of state and socially owned property, and make thrifty use of the people's wealth. While all these provisions sounded like programmatic declarations, in fact they were used to justify socialist penal practices aimed at political activists who had been prosecuted for apparent parasitism, hooliganism, unsocial conduct, or for subverting and weakening socialist authorities.[51]

Second, socialist law adopted a rule that the constitutionally guaranteed rights of citizens must not be detrimental to the interests of society or the state.[52] Freedoms of speech, press, assembly, meetings, street processions, and demonstrations were guaranteed only if they were exercised in a manner not contrary to the people's interests and to strengthen and develop the socialist system.[53] This rule, widely repeated by all socialist constitutions, stemmed from a general assumption that communal values take precedence over individual ones. According to Marxism-Leninism, respect for collective values was to follow from the growing unity of individual and society. Awareness of the superiority of shared interest to that of individual interest was supposed to create a "collective mentality"—a precondition for the further evolution toward communism. Citizens of the socialist states were expected to subordinate their private interests to the "common good" or to view their rights as reflecting their duties. Only the party and the government defined "interests of the people" and the "needs of socialism."

Third, socialist jurisprudence attempted to distinguish human rights as a philosophical category from fundamental constitutional rights as a political one.[54] Socialist legal theory was not interested in any inherent or natural rights and pretended to know nothing about them. John F. Copper, trying to explain this position on the basis of the Chinese approach, wrote, "To Mao, all rights—civil, political, economic, and social—were 'granted' according to the needs of the party, and the needs of the party changed. Thus, there could be no constant or unchanging tenet of human liberties and rights."[55] Constitutionally "granted" rights and freedoms were precisely listed. Moreover, they were not "self-executing," which meant that, except for a few socialist countries experimenting with judicial review (Yugoslavia and since the late eighties Poland),[56] their constitutional enumeration still did not give any legal basis for enforcing them in the courts.[57] It was assumed that the legislative body itself was responsible for maintaining the constitutionality of state actions and that constitutional review could not be exercised by extraparliamentary bodies. Constitutional control was usually reserved for internal organs of the legislative bodies, such as the Presidium.[58] Supervision of legal observance was vested in the procurator-general, who was appointed by, and responsible and accountable to, the supreme legislative body, itself controlled by the party.[59]

Fourth, to emphasize the superiority of socialist constitutionalism over a capitalist doctrine, socialist bills of rights contained numerous provisions on social, economic, and cultural rights (to work, to rest and leisure, to health protection, pensions, housing, education, and other benefits).[60] Socialist experts proudly proclaimed that the elevation of these rights to the highest ranking among fundamental constitutional principles emphasizes communist

governments' commitment to eliminating capitalist exploitation and inequalities. Constitutional guarantees for social, economic, and cultural rights were recognized as a basic criterion to distinguish between "formal" Western-style democracy and "socialist" democracy—the "formal" democracy offering only equality before the law and free use of market mechanisms, the "socialist" democracy offering the embodiment of a true distributive justice.

Placement of Rights in the New Constitutions

Going back to the initial question, where have the new European democracies looked in search of ideas? For comparativists using a background of Western and socialist traditions, a review of provisions of the new bills of rights and actual practices of the former Soviet satellites in the protection of their constitutional freedoms and liberties is highly instructive. Although the progress of constitutional reform among these countries will be open to ongoing debate, some observations can be made at this time.

1. As argued above, the original idea that basic laws should absorb bills of rights stemmed from the recognition that some liberties and rights should be protected as uniform features of human nature. These rights, which were, per se, inviolable and inalienable, were constitutionally pronounced and guaranteed. Nineteenth-century European constitutionalism abandoned some aspects of this naturalistic approach and emphasized a consensus reached by the people at a constitution's adoption. Rights and freedoms were granted as a result of legislative actions that constituted new legal situations. Thus, they could be curbed or expended through further activities of legislative assemblies—supreme organs of state power. The concept of "granted" rights gained a decisive upper hand in socialist constitutionalism.

Tracing these influences in the new East-Central European bills of rights will reveal that the drafters' approaches vary. Thus, the constitution of Hungary states clearly that it "recognizes the *inviolable and inalienable* fundamental human rights,"[61] and the constitution of Slovakia declares that "basic rights and liberties are *inviolable and inalienable,* secured by law, and unchallengeable."[62] On the other hand, the Romanian constitution guarantees only that "the citizens enjoy the rights and freedom *granted* to them by the Constitution and other laws. . . . ,"[63] and the Republic of Albania's charter of rights provides that "the fundamental freedoms and human rights are sanctioned and guaranteed by means of the following provisions. . . ."[64] These introductory pronunciations of the bills of rights are clearly different; still, as of today, it is difficult to determine to what extent the drafters of the

new constitutions deliberately followed more positivistic or naturalistic approaches and to what degree they simply transplanted the rhetoric with which they were familiar into the new bills.

2. Similarly, the idea that citizens have both rights and duties is well-grounded in Western European constitutionalism. It received full recognition in socialist jurisprudence. Some of the new constitutions seemed to play down the role of duties. The charter adopted January 9, 1991, before Czechoslovakia's "velvet split," referred only to "Rights and Freedoms." The newly adopted Albanian act of March 31, 1993, is just a "Charter of Rights." The Slovak constitution of September 15, 1992, states cautiously that "duties can be imposed only on the basis of law, within its limits, and while complying with basic rights and liberties."[65] Even the traditionally recognized duty "to defend the Motherland" was replaced by a declaration that "the defense of the Slovak Republic is a matter of honor for each citizen."[66] The constitutions of Bulgaria, Hungary, Poland, and Romania still provide separate chapters on "fundamental rights and duties" and emphasize the links between citizens' freedoms and obligations.

3. Typical socialist pronunciations of a "command character of rights" that could not be exercised "to the detriment of the society's interest" have been either entirely dropped from constitutions or replaced by statements that "people are equal in rights" and that their individual freedom is limited by others' equal freedom.[67]

4. The appeal to "collective interests," typical of socialist constitutionalism, still can be recognized in provisions on social and economic rights. Following European—and particularly socialist—traditions, the new democracies still claim wide constitutional protection for economic, social, and cultural rights, and, as observed, some new bills of rights offer even more protection than the economically vulnerable new states can deliver. The new constitutions declare the new states' dedication to principles of a market economy, but they provide that individual economic initiative "cannot develop contrary to the social interest."[68] Generally, with regard to an economic system, the new democracies are most often described as "social market economies," with the term "social" meaning widespread support for the state playing a large role in the intended egalitarian distribution of wealth and in mitigating hardships caused by free competition.

With this tendency still prevalent, a careful commentator should observe a growing sensitivity in East-Central Europe that social and economic rights should be treated differently from political rights and citizens' freedoms. Some constitutional drafts try to distinguish between "fundamental" and "other" rights, placing social and economic rights into the "other" category,

and some drafts attempt to offer only statutory not constitutional protection to other rights.[69]

The distinction between rights of "first" and "second rank" is strongly attacked by East-Central European liberals who argue in defense of constitutional protection of social and economic values. First, they claim that all rights deliver some benefits and that no qualitative difference exists among political, social, and economic benefits. Second, to enjoy political rights and freedoms, the people must have decent conditions of life guaranteed. Third, the protection of all rights—including political rights—is expensive for the state; thus, it is only a matter of social choice how to allocate resources needed to guarantee the benefits of all rights.[70] The group trying to disqualify the need for constitutional protection of social and economic rights responds that only benefits not rights have the same comparative qualitative value; rights can be claimed in court, and the new democracies cannot afford promising something that cannot be delivered. Thus, although the dispute did not undermine the constitutional status of social and economic rights, it increased the drafters' awareness of new basic laws that constitutional language has to be precise and that built-in enforcement mechanisms deprived the new constitutions of their previous window-dressing character.

5. Also to be observed is a general tendency to reduce the list of "citizens' rights" and to expand the number of "everybody's rights" guaranteed regardless of sex, race, color, language, creed or religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or other status.

6. Socialist doctrine's traditional approach of not recognizing the need for judicial review is no longer accepted. Constitutional review became the greatest novelty of the postsocialist world, and the selection of a model of judicial review, which would be applicable to the legal traditions of postsocialist countries, became one of the most controversial issues in the constitutional debate across East-Central Europe. Generally, as of today, the models of constitutional review based on Austrian, German, or French experiences had more appeal to the drafters of new East-Central European basic laws than the American decentralized and concrete system of review.[71]

7. Last, the actual record of the countries of former Soviet dominance in human rights protection has shown general improvement. Some countries, such as Albania, Slovakia, or Romania, still must acknowledge the existence of numerous violations of human rights; however, in other countries, such as Bulgaria, Hungary, and the Czech Republic, the improvement is noticeable and even significant; and in others, such as Poland, violations of human rights are exceptional.

Most of the new democracies ratified the European Human Rights Convention, joined the Council of Europe and permitted international human rights groups to monitor these states' practices in human rights protection. The reports from human rights organizations operating in this region indicate the general improvement with regard to respect for political rights. With the exception of some incidents in Albania and irregularities noted in Romania, the elections in most of these new democracies were held freely, and the basic principles of democratic pluralism have been respected by the newly elected governments. As far as freedom of expression and press is concerned, some irregularities have been observed even in the countries with lengthy democratic traditions, such as Hungary or Poland. Freedom of movement within the territory of these countries and abroad was not restricted, with the exception of the refugees who faced mistreatment in several countries including Romania, Albania, or Hungary.

Discrimination against ethnic communities is still a major problem for countries such as Albania, Romania, and Bulgaria. Some violations of minorities' rights have been noted in Slovakia, Hungary, Czech Republic and even in ethnically more homogenous Poland. It seems that the democratization of political and social life opened a Pandora's box of ethnic problems and that tension between ethnic groups, especially in East-Southern Europe, increased after the fall of communist dictators. In short, although the gap between theory and practice in human rights protection has been reduced, it persists and will remain visible for some time. Democratic processes in these countries seem to be irreversible, but further advancement of these processes requires time, foreign assistance, knowledge, and patience. Time is required to heal the wounds left in the thinking and attitudes of all living postsocialist generations, and time is needed to form a mature political culture in which politics would not have to take precedence over morality, communal values over individual ones, and the law would be more than a mere instrument in the hands of politicians.

CONCLUSION: ONE OR MANY MODELS?

The later chapters of this study have attempted to synthesize observations collected in the country-by-country reports. Thus, rather than summarizing these remarks, it would be more fruitful to address the question raised in the Introduction as to whether a new constitutional model is surfacing in the region of former Soviet dominance.

For the comparativist, the search for a constitutional model is probably the most difficult aspect of a meaningful comparative analysis. Modeling may mean searching for a structural design for prospective constitution-making. That is, commonly recognized features of "a good constitution" might inspire the projecting of a single constitutional paradigm that could be recommended to the drafters as an archetype or prototype for all constitutions.

Searching for a constitutional model also may mean something different, namely, a descriptive analysis of common characteristics that can actually be found in several constitutions. It may mean examining the common roots of some frequently used constitutional institutions and rationales for their application. This task, although modest, was always more appealing to me. I am convinced that the drafters of the new constitutions need information about the progress of other constitutional works more than they need lessons or examples for emulation and imitation. Looking from this perspective at the material collected here, several observations can be made.

With all similar circumstances in which the new constitutions are drafted, one cannot expect the duplication of the Stalinist process of constitutional "modeling." The prototype of a socialist constitution was framed in Moscow and was forced on the satellite Soviet countries. As far as the new, postsocialist democracies are concerned, the drafters borrow from one another, and sometimes they borrow more heavily than they ought to, but they have a freedom of choice limited only by the people's will. Thus, one should discuss the frequency with which several constitutional features are repeatedly used rather than describe a common core of the new constitutions.

To describe a model or a special type of constitution, the comparative expert has to find features that help place several constitutions into one category while leaving the others outside this group. Comparative analysis of the new constitutions hardly satisfies this requirement. True, the new constitutions have similar structures, and most of them reveal some intention of the drafters to base the stability of the new constitutional system on a significant degree of rigidity, but it has been pointed out that the new postsocialist constitutions share these features with other recently adopted constitutions in other parts of the world.

The description of the state as "a democratic, law-based republic, recognizing basic rules of the market" is typical for many Western constitutions. The reference to the state as an instrument of "social justice" sounds like a relic of socialist philosophy. However, such concern for principles of social justice is not unknown to Western constitutions. For example, the constitution of Ireland reflects traditional Catholic teaching about property and social justice, and it states that the exercise of the property rights "ought, in civil society, to be regulated by the principles of social justice."[1] The basic law of the Federal Republic of Germany describes the state as "a democratic and social state" and recognizes the right "to own and inherit property," provided that use of property "shall serve the public wealth."[2] The constitution of Japan declares that "all people shall have the right to maintain the minimum standards of wholesome and cultural living."[3]

Analysis of the new constitutions in the context of their political systems shows as many similarities as differences. On the one hand, the new democracies share with Western countries a tendency to limit the powers of government and to distribute its prerogatives among several governmental branches. On the other hand, some countries still prefer a parliamentary system, while others experiment with one of the forms of presidential or parliamentary-presidential systems. As of now, no clear indications can be seen that any of these systems will prevail in the countries of former Soviet dominance.

In terms of a system of constitutional enforcement, some mechanisms of judicial review—the greatest novelty in this region—are being absorbed. Still, with some preferences worth noting, no one model would attract the attention of the drafters of the new constitutions.

To summarize, no single constitutional model is surfacing in East-Central Europe because the constitutions in this region ceased to be granted. They are adopted as the result of a laborious process of drafting following political negotiations, tough compromises, and painful decisions. On the other hand, this study proved that constitutions no longer grow like trees. They are also not transplanted like organs into accomplished social organism. Rather, they

are like seedlings of plants carefully chosen from different gardens and implanted, piece by piece, into living, all the time changing, vegetation composed of legal rules, norms, and institutions. To be successful, this process requires a deep knowledge of political and legal gardening.

Will these implanted constitutions endure? Constitutions, conceived as apexes of their legal systems, are expected to last longer than the norms that derive their validity from the constitutional order. Because of that leading role, traditionally it has been assumed that the longevity of a constitution is one of the most important determinants of its value.

Americans are especially proud of their constitution's durability. In fact, however, long-lasting constitutions may contribute to the stability of the country's political and legal system, but they also may be a source of significant problems. A constitution's longevity may require its excessive flexibility. The will to preserve existing constitutions by all means may either force people to live under basic laws that are inadequate to existing political, economic, and social needs, or it may give juridical or political authorities the excessive power to manipulate the constitution through frequent amending or loosely expanded interpretation.

In fact, constitutions often are adopted in crucial moments of a nation's history and are expected either to set up an entirely new order or to reform existing institutions and legitimize recent transformations. Whatever their function, they are expected to reflect a balance that stems from a concrete geopolitical situation. With the disappearance of this balance, constitutions may lose their rationale or legitimacy. In the moment of their adoption and through their existence, their value depends on the degree to which they can satisfy social needs as enunciated by a country's most influential social groups and political factions. In other words, constitutions are acts of social agreement and are only as stable and durable as the consensus gained by them.

The political balance in which the new constitutions of the region of former Soviet dominance are rooted is fragile; therefore, new basic laws may not prove especially durable. Having been adopted during a transitional period, they may fulfill their role even without impressive longevity. To operate successfully for a length of time, they must maintain the integrity of their structure and offer a clear and consistent sequence of principles. Thus, the coherence and degree of social acceptance of constitutions—rather than their durability—should be recognized as the proper criterion for their future evaluation.

As of now, trying to assess the success of these constitutions, one has to acknowledge that new basic laws offer a highly diverse picture. Some of them, such as the Polish or Albanian constitutions, are interim acts, and their com-

pleteness and coherence can hardly be evaluated at this time. Some others—the Russian constitution, for one—with all their impressive coherence, reflect an extremely unstable political situation. Czech and Slovak constitutions were adopted more or less abruptly in the period during the split between these two republics, and to be evaluated, they have to be observed in operation. Still others, such as the Romanian constitution, or the constitutions of the former Soviet republics of Central Asia and Transcaucasia, have many gaps that were left for further implementing action, but for now these basic laws give an impression of incompleteness.

No single constitutional model has surfaced in East-Central Europe. However, the countries of this region face similar problems, and similar constitutional remedies might be tested to find their solution. These similarities should be identified by constitutional commentators, who should bring them to the attention of constitution drafters. It should be noted with some emphasis that two basically different skills are necessary to advance the process of constitutional drafting. Looking for advice and assistance, the East must distinguish between two kinds of constitutional experts: horizontal and vertical comparativists. The first kind of experts specialize in comparisons of recently drafted constitutional models and in the process of constitutional drafting, while the second kind focus on historical studies of constitutional traditions and legacies. Western constitutional experts may successfully fulfill the first role and highlight the horizontal dimension of the constitution-drafting process. If, however, the West does not want to duplicate the dissatisfying constitutional experiments of Third World countries, it should leave assessment of the analyzed models' adaptability to constitutional experts from the new European democracies.

NOTES

Introduction

1. See Russell Kirk, "Edmund Burke and the Constitution," *Intercollegiate Review* 21, no. 2 (1985–86): 3–11.

2. As Albert P. Blaustein pointed out, "Of the world's 162 existing constitutions (approximately 20 of which are presently 'suspended') only 15 were promulgated prior to World War II and only 14 more date from before 1960. The pre-war constitutions are United States (1789), Norway (1814), Belgium (1831), Liberia (1847 suspended), Argentina (1853), Luxembourg (1868), Switzerland (1874), Columbia (1886), Australia (1901), Mexico (1917), Finland (1919), Austria (1920), Liechtenstein (1921), Lebanon (1926 inoperative), and Ireland (1937)." Blaustein, *The Influence of the United States Constitution Abroad* (1986), 33 n. 25.

3. See Rett R. Ludwikowski, "The Beginning of the Constitutional Era: A Bicentennial Comparative Study of the American and French Constitutions," 11 *Michigan Journal of International Law* (1989), 167.

4. After the text of this book was completed, two new constitutions were adopted, the Georgian (Aug. 24, 1995) and the Azerbaijan (Nov. 12, 1995).

5. The Central and East European Law Initiative (CEELI), a project of the American Bar Association, is a cooperative effort to facilitate the process of legal transformation in East-Central Europe. CEELI is administered within the ABA's Section of International Law and Practice. A premise of this project is "making available U.S. legal expertise and assistance to countries that are in the process of modifying or restructuring their laws or legal systems. It is also serving as a research forum and a source of timely information on legal projects and legal developments in Central and Eastern Europe." Although the main purpose of the project is to offer U.S. legal experience, it recognizes that it is just one approach that participating countries may wish to consider. CEELI is designed to operate as a public service project, not a device for developing business opportunities. Its services are offered through a variety of legal workshops and conferences, a special "Sister Law School" exchange program is operated, and newsletters and "Legal Guides to Doing Business" are published. For more information on CEELI, see ABA brochure, "Central and East European Law Initiative: An

American Bar Association Initiative for Law Reform and Comparative Law," Dec. 1, 1990.

6. For example, the first Polish constitution dates to 1791, right after the American Constitution and four months before the first written French constitution. Bulgarians, in comparison, did not adopt their first constitution until 1879; praised as one of the most democratic in Europe, it was suspended within five years. However, Bulgaria is now at the forefront of adopting constitutional priorities such as the concepts of the division of powers and judicial review.

7. Portions of this text also have been adopted from the following published works and are reprinted here with permission: Rett R. Ludwikowski, "Soviet Constitutional Changes of the Glasnost Era: A Historical Perspective," *New York Law School of International and Comparative Law* 10 (1989): 119–50; Rett R. Ludwikowski (with William F. Fox, Jr.), *The Beginning of the Constitutional Era* (Washington, D.C.: Catholic University Press, 1993).

1 Constitutional Traditions: The Overview

1. K. C. Wheare, *Modern Constitutions* (1951), 10.

2. See Wenceslas J. Wagner, Arthur P. Coleman, and Charles J. Haight, "Laurentius Grimaldus Goslicius and His Age—Modern Constitutional Law Ideas in the Sixteenth Century," in Wagner, ed., *Polish Law Throughout the Ages* (1970), 98.

3. For a more profound examination of Polish constitutional traditions, see Rett R. Ludwikowski, "Two Firsts: A Comparative Study of the American and the Polish Constitutions," *Michigan Yearbook of International Legal Studies* 8 (1987):117–56.

4. *New Constitution of the Government of Poland* (1791), English trans.

5. See A. Ajnenkiel, *Polskie Konstytucje* [Polish Constitutions] (1983), 21–22.

6. See Ludwikowski, "Two Firsts," 145–46.

7. *New Constitution of the Government of Poland,* art. VI.

8. B. Leśnodorski, *Dzieło Sejmu Czteroletniego, 1788–1792* [The Work of the Four-Year Seym, 1788–1792] (1951), 294.

9. The two Polish kings directly preceding Stanislas Augustus were from the Saxon dynasty.

10. See A. Gieysztor, S. Kieniewicz, E. Rostworowski, J. Tazbir, and H. Wereszycki, *The History of Poland* (1968), 413.

11. See the constitution of 1807, rept. Marceli Handelsman, *Trzy Konstytucje* [The Three Constitutions] (1915), 1–12.

12. See Ajnenkiel, *Polskie Konstytucje,* 91.

13. See Gieysztor, *History of Poland,* 433.

14. See A. Rembowski, "Nasze Poglądy Polityczne w 1818" [Our Political Opinions in 1818], in *Pisma* [Works] (1901–8), 73. See also "Mowa na Obchodzie Rocznicy Wstąpienia na Tron N. Pana Imperatora Aleksandra I–12 VI 1818" [Speech on the Celebration of the Anniversary of the Elevation to the Throne of His Imperial High-

ness Alexander the First] (June 12, 1818); see J. Wybicki, *Zbiór Myśli Politycznych o Rządzie Reprezentacyjnym* [Collection of Thoughts on the Representative Government] (1819), 21.

15. The personal union meant that the Russian tsar was also monarch of the Polish kingdom.

16. See Gieysztor, *History of Poland,* 463.

17. N. Stone, *Europe Transformed, 1878–1919* (1984), 305.

18. Helmut Steinberger, "American Constitutionalism and German Constitutional Development," in Louis Henkin and Albert J. Rosenthal, eds., *Constitutionalism and Rights: The Influence of the United States Constitution Abroad* (1990).

19. Steinberger, "American Constitutionalism," 202.

20. See S. Burant, *East Germany: A Country Study* (1988), 16–18.

21. Ibid., 202. See also H. Bain and L. Rogers, eds., *The New Constitutions of Europe* (1922), 214.

22. See 2 *Prawa Państwa Polskiego* [Laws of the Polish State] 428 (1918); *Projekty Konstytucji Rzeczypospolitej Polskiej* [Projects of the Constitutions of the Polish Republic] (1919), 139; see also M. Jaskólski, *Historia, Naród, Państwo* (1981), 131–32.

23. See S. Estreicher, *Nasza Konstytucja* [Our Constitution] (1922).

24. See the constitution of the Polish Republic, Mar. 17, 1921, in Burda, *Konstytucja Marcowa* [The March Constitution] (1983). The constitution of 1921 was preceded by the temporary constitutional act, the Small Constitution of Feb. 20, 1919.

25. Burda, *Konstytucja Marcowa,* art. 14.

26. See ibid., 32; see also Gieysztor, *History of Poland,* 653.

27. Constitution of 1935 (Poland), art. 2 (text of the constitution in a separate brochure of 1935).

28. See Kos, Rabcewicz, and Żubkowski, "Polish Constitutional Law," in Wagner, *Polish Law Through the Ages,* 249–50.

29. "Zemsky Sobor" was a sort of "assembly of the country," which was summoned for the first time in 1550. In 1613, Zemsky Sobor elected Tsar Michael and continued its session for three years. Shortly afterward, it ceased to operate.

30. J. Netti, *The Soviet Achievement* (1967), 20.

31. See W. F. Dodd, *Modern Constitutions* 2 (1909), 181.

32. Ibid.

33. "The Fundamental Laws of the Russian Empire," art. 4, reprt. *Modern Constitutions,* 182–95.

34. Ibid., arts. 7–8.

35. Ibid., 192 n. 4.

36. Ibid.

37. Ibid.

38. Ibid.

39. Ibid.

40. Lenin insisted on "recognition of the fact that in most of the Soviets of Workers' Deputies our [Bolshevik] Party is a minority, so far a small minority, as against a bloc

of all the petty-bourgeois opportunist elements, from the Popular Socialist and the Socialist-Revolutionaries down to the Organizing Committee." Lenin, "Tasks of the Proletariat in the Present Revolution," *Collected Works* (1964), 22; see also Netti, *Soviet Achievement,* 65.

41. J. Curtiss, "The Russian Revolution of 1917," in S. Hendel, ed., *The Soviet Crucible: The Soviet System in Theory and Practice* (5th ed., 1980), 84; see also D. Barry and C. Barner-Barry, *Contemporary Soviet Politics: An Introduction* (1977), 19.

42. See Barry and Barner-Barry, *Contemporary Soviet Politics,* 21.

43. "Thus the Constituent Assembly, which was to have been the crown of the bourgeois parliamentary republic, could not but become an obstacle in the path of the October Revolution and the Soviet Power." Lenin, "Draft Decree on the Dissolution of the Constituent Assembly," in R. Daniels, ed., *Documentary History of Communism* (1960), 133.

44. Ibid.

45. See Isaac Deutscher, "Defeat in Victory," in *The Soviet Crucible: The Soviet System in Theory and Practice,* ed. S. Hendel (5th ed., 1980).

46. Ibid., 93, 100.

47. K. Redden, ed., *Modern Legal Systems Cyclopedia* 8 (1985), 418, §1.13(c); see also Frances Foster-Simons, "Towards a More Perfect Union: The Restructuring of Soviet Legislation," *Stanford Journal of International Law* 25 (1989): 333.

48. Decree on the Expulsion of the Right Socialist Parties from the Soviets, reprt. Lenin, *Documentary History,* 156–58.

49. E. Carr, *The Bolshevik Revolution, 1917–1923* (1951), 124.

50. See Redden, ed., *Modern Legal Systems Cyclopedia,* 423.

51. Carr, *Bolshevik Revolution,* 125.

52. See F. Feldbrugge, G. Van Den Berg, and W. Simons, eds., *Encyclopedia of Soviet Law* 159 (2d rev. ed., 1985).

53. See L. Schapiro, *The Communist Party of the Soviet Union* (1971), 184; W. Chamberlin, *The Russian Revolution* (1965), 60.

54. Chamberlin, *Russian Revolution,* 60.

55. KONST. SSSR, reprt. Bain and Rogers, eds., *The New Constitutions of Europe,* 385–400; reprt. J. Triska, ed., *Constitutions of the Communist Party-States* (1968), 2–16.

56. KONST. SSSR, art. 23, in Bain and Rogers, eds., *New Constitutions.*

57. Ibid., art. 18.

58. Ibid., art. 12.

59. Ibid., art. 25.

60. Ibid., arts. 28, 30.

61. Ibid., arts. 35–37.

62. Chamberlin, *Russian Revolution,* 60.

63. W. Munro, *The Governments of Europe* (1983), 738.

64. Feldbrugge, Van Den Berg, and Simons, *Soviet Law,* 161.

65. Ibid.

66. Carr, *Bolshevik Revolution,* 399.

67. Ibid., 409.
68. KONST. SSSR, in Triska, ed., *Constitutions of the Communist Party-States.*
69. Ibid., arts. 3, 8, 9.
70. Ibid., art. 11.
71. The number of representatives to the Council of the Union was increased to 414 by the Second Congress. See Carr, *Bolshevik Revolution,* 401.
72. KONST. SSSR arts. 4, 14, in Triska, ed., *Constitutions of the Communist Party-States.*
73. See ibid., arts., 4, 26.
74. Ibid., arts. 6, 37, 41.
75. Ibid., art. 31.
76. Carr, *Bolshevik Revolution,* 406–7.
77. See *Harvest of Despair* (film and documents collected by Ukrainian Famine Research Committee, 1981).
78. Ibid.
79. Barry and Barner-Barry, *Contemporary Soviet Politics,* 72.
80. Ibid.
81. V. Kravchenko, *I Chose Freedom* (1989), 198.
82. See V. Chkhikvadze, *Soviet State and Law* (1969), 218.
83. Redden, ed., *Modern Legal Systems Cyclopedia,* 421.
84. Ibid.
85. Ibid., 422.
86. S. Cohen, *Bukharin and the Bolshevik Revolution* (1973), 356–57.
87. Ibid., 366–67.
88. Munro, *Governments of Europe,* 744.
89. KONST. SSSR, reprt. Peaslee, *Constitutions of Nations* (2d ed. 1956), 480–503.
90. Ibid., art. 134.
91. Ibid., arts. 118, 119.
92. Ibid., art. 120.
93. Ibid., art. 121.
94. Ibid., arts. 122, 123.
95. Ibid., art. 124.
96. Ibid., art. 125.
97. Ibid., art. 126.
98. Ibid., art. 127.
99. Ibid., art. 128.
100. Ibid., arts. 32, 33.
101. Ibid., art. 34.
102. Ibid., art. 35.
103. Ibid., art. 64.
104. Ibid., arts. 65, 70.
105. Ibid., art. 48.
106. See Kravchenko, *I Chose Freedom.*

107. Curtiss, "Russian Revolution of 1917," 137–44.
108. Schapiro, *Communist Party,* 482–83. See *Pravda,* June 16, 1938.
109. R. Sharlet, *De-Stalinization and Soviet Constitutionalism in the Soviet Union Since Stalin,* ed. S. Cohen, A. Rabinowitch, and R. Sharlet (1980), 94–95.
110. Between 1937 and 1974 the Stalin constitution was amended 250 times, affecting 73 of the original 146 articles. Redden, ed., *Modern Legal Systems Cyclopedia,* 508, n. 305. For details on amendments, see S. Rusinova and V. Rianzhin, *Sovetskoe Konstitutisionnoe Pravo* (1975), 81–85.
111. In 1966 the size of the commission was reduced to seventy-five members, in early 1977 to fifty-four, and, finally, in April 1977 it was increased by twenty-one new members. See R. Sharlet, *The New Soviet Constitution of 1977* (1978), 1–4, 26; see also Redden, ed., *Modern Legal Systems Cyclopedia,* 420.
112. Sharlet, *De-Stalinization,* 96.
113. Ibid.
114. Redden, ed., *Modern Legal Systems Cyclopedia,* 421.
115. See KONST. SSSR of 1977, reprt. *Basic Documents on the Soviet Legal System* (1983), 3–32.
116. Ibid., arts. 1, 19.
117. Ibid., art. 9.
118. Ibid., art. 3.
119. Ibid., art. 6.
120. Ibid., arts. 10–18.
121. Ibid., arts. 19–27.
122. Ibid., arts. 10–18.
123. Ibid., art. 39.
124. Ibid., art. 6.
125. Ibid., art. 108.
126. The representation of Union Republics in the Soviet of Nationalities was slightly changed. In the new constitution each republic has thirty-two instead of the previous twenty-five deputies. Ibid., art. 110.
127. KONST. SSSR of 1977, *Basic Documents,* arts. 119–124, 128–136.
128. W. Simons, *The Constitutions of the Communist World* (1980), 312.
129. Ibid., 35.
130. See C. Leff, *National Conflict in Czechoslovakia* (1988), 11, 26.
131. David W. Paul, *Czechoslovakia: Profile of a Socialist Republic at the Crossroad of Europe* (1981), 18.
132. Czechoslovak constitution (1920), reprt. Bain and Rogers, eds., *New Constitutions of Europe,* 310.
133. Ibid., preamble, art. 2.
134. Czech constitution, arts. 8, 13.
135. Ibid., art. 2. In Austria this model was first tested in 1867, adopted in the constitution of Oct. 1, 1920, and amended in 1929. See Z. Czeszejko-Sochacki, *Trybunał Konstytucyjny w Polsce* (1986), 15–17.

136. Paul, *Czechoslovakia,* 25.
137. See V. Mamatey and R. Luza, *A History of the Czechoslovak Republic, 1918–1948* (1973), 250.
138. Paul, *Czechoslovakia,* 28; R. Sadler, "Czechoslovakia: Democratic Traditions, Constitutional Change, National Conflict and Prospects Under Havel" (1990), 89 (unpublished paper).
139. Sadler, "Democratic Traditions," 96–97.
140. Leff, *National Conflict;* see also Sadler, "Democratic Traditions."
141. Sadler, "Democratic Traditions," 9; see also R. Saar, *Communist Regimes in Eastern Europe* (1988), 61.
142. Loren nos. 143/1968, 144/1968, 57/1969, 155/1969, 43/1971, 62/1978; see Simons, *Constitutions of the Communist World,* 138.
143. Ibid.
144. Halina Donath, *Przemiany Ustrojowo-Prawne na Węgrzech 1939–1949* [Political and Legal Transformation in Hungary, 1939–1949] (1978).
145. Ibid., 7.
146. Ibid., 11; see also T. Szymczak, *Ustrój Europejskich Państw Socjalistycznych* [The Political System of the European Socialist States] (1993), 237.
147. Donath, *Prezeminy,* 18.
148. Ibid., 21.
149. Ibid., 68.
150. Simons, *Constitutions of the Communist World,* 192.
151. Ibid., 197. On Dec. 22, 1983, another more important amendment established the constitutional law council, which as an organ of parliament was given a right of internal constitutional review.

2 Constitutional Legacy: Confrontation of East and West

1. George Schöpflin, "The Political Traditions of Eastern Europe," *Daedalus* 55 (Winter 1990): 119.
2. See ibid., 52.
3. See A. Gieysztor, S. Kieniewicz, E. Rostworowski, J. Tazbir, and H. Wereszycki, *History of Poland* (1968), 224.
4. Rett R. Ludwikowski, "Two Firsts: A Comparative Study of the American and the Polish Constitutions," *Michigan Yearbook of International Legal Studies* 8 (1987): 117–56.
5. The Romanov dynasty ruled Russia until 1917; the Hohenzollerns ruled Prussia and united Germany; the Habsburgs were emperors of Austria until the end of World War I.
6. Helmut Steinberger, "American Constitutionalism and German Constitutional Development," in Louis Henkin and Albert J. Rosenthal, eds., *Constitutionalism and Rights: The Influence of the United States Constitution Abroad* (1990).

7. A. Kh. Makhenenko, *The State Law of the Socialist Countries* (1976), 55. Chris Osakwe, "The Common Law of Constitutions of the Communist-Party States," *Review of Socialist Law* 3 (1977): 155–217.
8. Mauro Cappelletti and William Cohen, *Comparative Constitutional Law* (1979): 21.
9. Makhenenko, *State Law,* 64.
10. Ibid., 65; see also the examination of this point of view in Cappelletti and Cohen, *Comparative Constitutional Law.*
11. Osakwe, "Common Law," 159.
12. See KONST. SSSR of 1977, reprt. *Basic Documents on the Soviet Legal System* (1988), 159.
13. Robert G. Neumann, "Constitutional Documents of East-Central Europe," in A. J. Zurcher, ed., *Constitutions and Constitutional Trends Since World War II* (1979), 175–76.
14. See Andrei Vyshinsky, *The Law of the Soviet State* (1984), 167.
15. A. Galin and M. Faruskhkin, "Protiv Antimarksistovskich Postrojenij Burzuazyjnych Tieoretikov Gosudarstva i Prava" (Against Anti-Marxist Conceptions of the Bourgeois Theorists of the State and Law), *Sovetskoe Gosudarstvo i Pravo* 2 (1968): 56.
16. V. Chkhikvadze, *Soviet State and Law* (1969), 218.
17. KONST. SSSR of 1977, *Basic Documents,* art. 3.
18. Osakwe, "Common Law," 167.
19. Vyshinsky, *Law of the Soviet State,* 552–57.
20. Neumann, "Constitutional Documents," 178; see also Konstanty Grzybowski, *Ustroj Polski Wspolczesnej* (The Political System of Contemporary Poland) (1948), 120.
21. J. N. Hazard, W. E. Butler, and P. B. Maggs, *The Soviet Legal System: The Law in the 1980s* (1984), 320.
22. See V. M. Chkhikvadze, *The Soviet State and Law* (1969), 221; see also R. David and J. E. C. Brierly, *Major Legal Systems in the World Today* (1985), 2401; J. Hazard, I. Shapiro, and P. B. Maggs, *The Soviet Legal System* (1969), 40.
23. To give just one example, see USSR constitution of 1977, *Basic Documents,* art. 121; see also Mauro Cappelletti, *Judicial Review in the Contemporary World* (1971), 7.
24. USSR constitution, *Basic Documents,* arts. 164, 165.
25. D. Barry and C. Barner-Barry, *Contemporary Soviet Politics: An Introduction* (1977), 19.
26. J. Łetowski, "Administracja i Obywatele w PRL" (Administration and Citizens in the Polish Peoples' Republic) (1984); *Państwo i Prawo* 7 (1984): 52, 60.
27. S. Hendel, *The Soviet Crucible: The Soviet System in Theory and Practice* (1980), 94.
28. Vyshinsky, *Law of the Soviet State,* 339–40.
29. S. Rozmaryn, "Kontrola sprawiedliwosci Ustaw" (The Control of the Legality of the Laws), *Panstwo i Prawo* 11–12 (1946): 866.
30. Nowakowski, "Konstytucyjne podstawy działalnosci sądownictwa administracy-

jnego w. Polsce" (Constitutional Basis for the Operation of Administrative Adjudication in Poland), 4 *Państwo i Prawo* (1985): 70; see also M. Wyrzykowski, *Sądowa Kontrola decyzji administracyjnych w państwie socjalistycznym* (Judicial Control of Administrative Decisions in the Socialist State) (1978), 80.

31. KONST. SSSR of 1977, *Basic Documents,* art. 58.

32. Judicial review in Poland is the most advanced of socialist legal systems, and its development will be discussed separately. On the development of judicial review in East Germany, see M. Wrzykowski and S. McCaffrey, "The Supreme Administrative Court of Administrative Law: A New Development in Eastern Europe," in K. Redden, ed., 8 *Modern Legal Systems Cyclopedia* (1985), 418, §1.13(c), 159.

33. Bor T. Blagojevic, "The Legal System of the Socialist Federal Republic of Yugoslavia," in Redden, ed., *Modern Legal Systems Cyclopedia,* 694–95.

34. See ibid.

35. T. Pop, "The Legal System of the Socialist Republic of Romania," in Redden, ed., *Modern Legal Systems Cyclopedia,* 211–12.

36. Redden, ed., *Modern Legal Systems Cyclopedia,* 161–62.

37. Ibid., 62. Experts on Hungarian law comment that after the adoption of the new statute in 1981, a tendency developed to increase the number of matters that may be appealed.

38. Federal Constitution of Yugoslavia, arts. 241–51 (1963); see also *Law on the Yugoslav Constitutional Court* (Institut de Droit, trans.); and (1963) 7, and (1965) 14, *Recueils des Lois de la RSF de Yougoslavie.*

39. Cappelletti and Cohen, *Comparative Constitutional Law,* 51.

40. *Czeszejko-Sochaki* "Trybunal Konstytacgjny w PRL" (Constitutional Tribunal in the People's Republic) (1986), 19.

41. Constitution of the Czechoslovak Socialist Republic of 1960, art. 4 (as amended); Constitution of the People's Republic of Bulgaria of 1971, arts. 1–2, 3 (as amended); Constitution of the Hungarian People's Republic of 1949, art. 3 (as amended); Constitution of the Polish People's Republic of 1952, art. 3 (as amended); Constitution of the German Democratic Republic of 1968, art. 1 (as amended). For texts, see William B. Simons, *The Constitutions of the Communist World* (1980), 312.

42. Ibid.

43. See Osakwe, "Common Law," 175.

44. "Constitutional Law on the Czechoslovak Federation, of 1968 (as amended 1970)," reprt. Simons, *Constitutions of the Communist World,* 602.

45. Ibid., art. 60.

46. Ibid.

47. Ibid., art. 43, § 2; see T. Szymczak, *Ustrój Europejskich Państw Socjalistycznych* (The Political System of the European Socialist States) (1983), 427–31.

48. Constitution of the Socialist Republic of Romania, art. 72.

49. Osakwe, "Common Law," 178.

50. Bulgarian constitution, art. 128; Romanian constitution, art. 108; Czechoslovak constitution, art. 1010; Hungarian constitution, art. 48.

51. GDR constitution, art. 95.
52. Polish constitution, art. 60.

3 Political and Constitutional Reforms of the Glasnost and Postglasnost Periods

1. K. Redden, ed., *Modern Legal Systems Cyclopedia* 8 (1985), 418, §1.13(c), 418.
2. See E. Carr, *The Interregnum, 1923–1924* (1960), 257.
3. In 1964, Mikoyan rose to the rank of president of the Presidium of the Supreme Soviet, but the following year he resigned the office for reasons of ill health. In 1964, Kosygin was elevated to premier. He resigned in 1980 for the same reasons as Mikoyan.
4. "Demokratazatsiya nashay zhizni" (Democratization in Our Time), *Pravda,* Oct. 25, 1988, 1.
5. *Tass,* Dec. 1, 1988 (extracted in "Constitutional Amendments Approved," FBIS-SOV-88-231), 46–47.
6. "USSR Law on Amendments and Additions to the USSR Constitution (Fundamental Law)," reprt. *Pravda,* Dec. 3, 1988, 1–2 (1st ed.) (trans. and extracted in *Law on Constitutional Amendments,* FBIS-SOV-88-233), Dec. 5, 1988, 48–58.
7. Ibid., 50.
8. "USSR Law on Elections of USSR People's Deputies," reprt. *Pravda,* Dec. 4, 1988, 1–3 (1st ed.) (trans. and extracted in *Law on Constitutional Amendments,* FBIS-SOV-89-233), Dec. 5, 1988, 35.
9. Ibid., art. 15.
10. See "Democratization in Our Time"; see also *Constitutional Amendments.*
11. A. Vyshinsky, *Law of the Soviet State* (1948), 7.
12. Ibid., 722.
13. See M. Dezso, "Socialist Electoral Systems and the 1983 Hungarian Reform," in W. Butler, ed., *Yearbook on Socialist Legal Systems* (1986), 46–47.
14. See KONST. SSSR of 1977, reprt. *Basic Documents on the Soviet Legal System,* art. 100.
15. See *Constitutional Amendments,* art. 100; "USSR Law on Elections," art. 24.
16. "Strogii Examen" (Strict Examination), *Pravda,* Oct. 18, 1988, 1.
17. Vyshinsky, *Law of the Soviet State,* 724.
18. See Michael Dobbs, "Party Still Holds Key to Soviet Elections," *Washington Post,* Jan. 11, 1989, A15.
19. Ibid.
20. Ibid.
21. Ibid.
22. Michael Dobbs, "Sakharov Seeking Stamp of Approval," *Washington Post,* Jan. 23, 1989, A14.
23. Ibid.; see also W. Chamberlin, *The Russian Revolution* (1965), 458.
24. J. Wróbel, "The Drama of Polish Education Continues," *Studium Papers* (1987), 3.

25. J. Jeff Trimble, "Reform Is Risky Business," *U.S. News & World Report,* June 19, 1989, 27–28.
26. David Remnick, "Sakharov Sees Gorbachev at Risk," *Washington Post,* June 22, 1989, A34.
27. Ibid.
28. Trimble, "Reform Is Risky," 28.
29. "Democratization in Our Time."
30. *Law on Constitutional Amendments,* art. 108.
31. "Deputy Elections Law," ibid., arts. 15, 17, 18. For the full text of art. 18, see *Pravda,* Dec. 4, 1989, 1.
32. Michael Dobbs, "Gorbachev Appeals for Political Reforms," *Washington Post,* Nov. 30, 1988, A34.
33. See *Law on Constitutional Amendments,* chap. 15.
34. Ibid.
35. Ibid.
36. Ibid.
37. Ibid.
38. Michael Dobbs, "Soviet Reformers Suffer Broad Defeat in Key Legislature Vote," *Washington Post,* May 28, 1989, A1.
39. Shlapentokh, "Gorbachev's Real Foe—The Soviet Workers," *Washington Post,* Nov. 26, 1989, C2.
40. Gary Lee, "Sakharov Sees Threat to Reform," *Washington Post,* Nov. 8, 1988, A1; Kirkpatrick, "Sakharov's Fears," *Washington Post,* Nov. 7, 1988, A23.
41. Rett R. Ludwikowski, "Searching for a New Constitutional Model for East-Central Europe," *Syracuse Journal of International Law and Commerce* 17 (1991), 145–47.
42. See James Jeff Trimble, Douglas Stanglin, and Julie Corwin, "Death of a Nation: The Last Hurrah," *U.S. News & World Report,* Nov. 19, 1990, 37.
43. The assumption that Gorbachev's glasnost and perestroika are "communist nonetheless" was widely disputed by Sovietologists. For further discussion of this issue, see Martin Malia, "A New Russian Revolution?," *New York Review of Books,* July 18, 1991; Malia, "The August Revolution," *New York Review of Books,* Sept. 26, 1991. For polemics with Malia, see Andrzej Walicki, "Russia, Before the Coup and After," *Critical Review* 5 (1991).
44. Dimitri K. Simes, "America and the Post-Soviet Republics," *Foreign Affairs* 71 (1992): 79, 80.
45. *Political News: Build Up, Progress/Aftermath of Coup, Baltics,* Business International Country Report, Sept. 10, 1991. Available in, LEXIS, Intlaw Library, Country Report file.
46. Ibid.
47. Ibid. The program was widely heralded at the time of the July 1991 summit of leaders of the seven major world economic powers. Gorbachev's attendance was meant to help cement his association with the West and to emphasize his commitment

to true economic reform. The Soviet Union also was awarded associate membership in the IMF and the World Bank.

48. *Government Structure,* "Doing Business in Eastern Europe," July 1, 1991 (Business International). Available in LEXIS, World Library, DBUSEU file.

49. LEXIS, Intlaw Library, Country Report File, Jan. 20, 1992.

50. *Government Structure.*

51. Ibid.

52. *Recent Political and Economic Trends, the Coup d'Etat Attempt in USSR: Why It Was Bound to Fail,* "Doing Business in Eastern Europe," Jan. 1, 1992 (Business International).

53. "A Chronology of Gorbachev's Bid to Hold the Union Together," *Washington Post,* Dec. 13, 1991, A40.

54. Ibid.

55. "Transformations in the Interests of Working People," *Washington Post,* Aug. 25, 1991, A27; see "Gorbachev Abandons Party," *Washington Post,* Aug. 25, 1991, A1.

56. "China Notes 'Vigorous Upheavals' in Soviet Union Under Gorbachev," *Zinhua News Agency,* reprt. BBC, Summary of World Broadcasts, Dec. 28, 1991. Available in LEXIS, Nexis Library, BBCSWB file. Hereinafter BBC, World Broadcasts.

57. Ibid.

58. A Chronology of "Gorbachev's Bid."

59. LEXIS, Intlaw Library, Country Reports File, 4, Jan. 6, 1992.

60. *Recent Political and Economic Trends.*

61. Ibid.

62. A Chronology of "Gorbachev's Bid."

63. "China Notes 'Vigorous Upheavals.'"

64. Ibid.

65. Bogert, "They Beat the Coup—So Why the Gloom?" *Newsweek,* Aug. 31, 1992, 48.

66. "Constitutional Commission's Draft Text," *Argumenty I Fakty* [Points and Facts], March 30, 1992, reprt. BBC, World Broadcasts, April 4, 1992.

67. Ibid.

68. Dmitry Kazutin, "What I Have Read, Heard or Seen," *Moscow News,* Oct. 16, 1991.

69. Viktor Sheinis, "New Constitution: Priority to the Individuals," *Moscow News,* Oct. 2, 1991.

70. Vadim Bakatin, "A Draw—in Whose Favor?" *Moscow News,* April 29, 1992.

71. Sheinis, "New Constitution."

72. Ibid.

73. Treaty on Demarcation of Jurisdictions and Powers Between the Federal Organs of State Power of the Russia Federation and the Organs of Power of the Republics within the Russia Federation, March 13, 1992, reprt. SovData Dialine-SovLegisLine.

74. Article III(1) of the Russian federal treaty provides: "The Republics shall have the

plentitude of state power on their territory with the exception of the powers delegated to the jurisdiction of the Federal organs of state power of the Russia Federation under the present Treaty." See ibid., art. III(1).

75. "Draft Constitution of the Russian Federation, chap. 14 (terms of reference and authority of the Russian Federation and the republics, krays, oblasts, autonomous oblasts, and autonomous okrug)," reprt. *Argumenty i Fakty,* March 30, 1992, trans. April 4, 1992.

76. "Constitutional Commission's Draft Text," reprt. *Argumenty i Fakty,* March 30, 1992, arts. 1–12.

77. See Sheinis, "New Constitution."

78. Ibid.

79. "Address to Russia's Congress of People's Deputies on the Draft Constitution by the Russian President and Chairman of the Constitutional Commission," official Kremlin international news broadcast, Nov. 4, 1991.

80. Ibid.

81. Ibid.

82. See Sergei Alexeyev and Anatoli Sobchak, "Constitution and the Destiny of Russia," *Soviet Press Digest,* Mar. 30, 1992; see also Vladimir Todres, "Save the Constitution and Take Khazbulatov 'Down a Peg,'" *Soviet Press Digest,* March 7, 1992 (Todres's comments on the draft proposed by the Communists of Russia faction, assisted by the so-called Smena group of deputies).

83. I. Sichka, "Presidential Draft Constitution of Russia Discovered," *Soviet Press Digest,* Apr. 9, 1992; see also "The President's Draft Constitution of Russia Is Found," official Kremlin international news broadcast, April 9, 1992.

84. Sergei Chugayev, "Russia's President Ready to Hold Referendum on Land and New Constitution," *Soviet Press Digest,* May 13, 1992. Chugayev commented on the main problem facing Yeltsin: "He does not have the power to conduct referendum. So Yeltsin is expected, before the month is out, to ask Parliament to amend the relevant legislation so as to grant him such powers. Should Parliament refuse, he would have to collect one million votes in support of the demand for a popular vote to enable the President to conduct referendums. This would of course slow the process of adopting a new Constitution, but would make it possible to use such a referendum for settling the land issue."

85. See "1992 Constitutional Commission's Draft Text."

86. "Amendments Proposed by the President of the Russian Federation to the Draft Constitution of the Russian Federation" (unpub. text of 16 *Amendments,* trans. by CEELI, Nov. 1992).

87. "Khasbulatov Reports on Draft Constitution; Basic Provisions Ok'd," *Current Digest of the Soviet Press* 44 (May 20, 1992): 7.

88. Andrei Goltsblat, "Many Variants, But One Choice: The Draft Itself, What to Do?" *Rossiskaya Gazeta* [Russian Gazette], Oct. 8, 1992; "Boris Yeltsin: Russia Is Losing a Lot Because It Lives by the Old, Tattered and Patched Up Constitution," *Soviet Press Digest,* July 30, 1992.

89. Questions on the ballot: Do you,
1. Have confidence in Russian President Bois Yeltsin?
2. Approve of the socioeconomic policy carried out by the president of the Russian Federation and the government of the Russian Federation since 1992?
3. Consider it necessary to carry out early elections for the president of the Russian Federation? and
4. Consider it necessary to carry out early elections for the deputies of the Russian Federation?
Michael Dobbs, "Exit Poll Points to Support for Yeltsin," *Washington Post,* April 26, 1993, A15. The Congress claim that Yeltsin needed to win a majority of Russia's 107 million eligible voters has been stricken by the constitutional court, which ruled that only a majority of the total voter turnout was needed for Yeltsin to win. Margaret Shapiro, "Top Court Backs Yeltsin on Vote," *Washington Post,* April 22, 1993, A31.
90. "Russian Referendum Unlikely to Settle Legal Issues for Foreign Businesses," *BNA's Eastern European Reporter,* Apr. 12, 1993, 299–300; Margaret Shapiro, "Newly Aggressive Yeltsin Feinting Upper Hand Over Foes," *Washington Post,* May 16, 1993, A25–30.
91. Dwight Semler, "Special Reports, Summer in Russia Brings No Real Political Progress," *East European Constitutional Review,* Summer 1993, 20.
92. Ibid.
93. Ibid., 21; Michael Dobbs, "Russians Open Talks on New Constitution," *Washington Post,* June 6, 1993, A29 and 32.
94. Semler, "Special Reports," 21.
95. "Parliament: Russia Again Has Two Draft Constitutions," *Current Digest of the Soviet Press* 45, no. 31 (Sept. 1, 1993): 19.
96. Margaret Shapiro, "Yeltsin Dissolves Parliament, Orders New Vote," *Washington Post,* Sept. 22, 1993, A1.
97. Stephen Cohen, "Yeltsin's Desperation Dismantles Democracy," *Washington Post,* Oct. 10, 1993, C1.
98. Margaret Shapiro, "Yeltsin Orders Russia's Councils to Disband," *Washington Post,* Oct. 10, 1993, A33; "Yeltsin's 'Essential' Crackdown Provokes Charges of Expediency," Oct. 16, 1993, A14.
99. After he cracked down on his political enemies, Yeltsin met on Nov. 26, 1993, with the leaders of the major political parties and warned them "that free time on television is not given for [personal attacks] and we will deny freedom for such violations. Your theme is your election platform . . . *I ask you not to touch upon the constitution*" (my emphasis); Lee Hockstader, "Yeltsin Threatens to Yank TV Time from Opponents," *Washington Post,* Nov. 27, 1993, A21.
100. Ibid. Packaging the referendum on a new constitution with parliamentary elections sparked attacks by Yeltsin's opponents that he intended to divert the attention of the electorate from his attempt to establish a presidential system in Russia to the kind of milder social and economic issues usually discussed during parliamentary campaigning.

101. "Draft Constitution," *Rossiyskaya Gazeta* 10 (Nov. 10, 1993): 3–6; trans. reprt. in BBC, World Broadcasts, Nov. 11, 1993. The new Russian electoral law is based on a German model, which is a combination of simple plurality and proportional systems. The law provides that only half the 450 seats in the new assembly are elected on an individual basis; the other half are elected from party lists. "Yeltsin's 'Essential' Crackdown."

102. *New Russian Constitution Is Adopted: Official Results on Referendum,* BBC, World Broadcasts, Dec. 21, 1993.

103. "Russia Special: Yeltsin's Speech," BBC, World Broadcasts, Nov. 11, 1993.

104. Compare art. III of the "Treaty on the Delineation of Spheres of Jurisdiction and Powers Between Federal Bodies of State Power of the Russian Federation and the Bodies of Power of the Sovereign Republics Belonging to the Russian Federation" and art. III of the "Treaty on the Delineation of Spheres of Jurisdiction and Powers Between Federal Bodies of State Power of the Russian Federation and the Bodies of Power of Krays, Oblasts and the Cities of Moscow and St. Petersburg of the Russian Federation," in Albert P. Blaustein, ed., *Constitutions of the Countries of the World,* supp., May 1993, 209 and 217.

105. Semler, "Special Reports," 20–21.

106. "Concluding and Transitional Provisions of the Constitution of the Russian Federation," sec. 1.

107. Draft constitution proposed by Yeltsin, Apr. 29, 1993, arts. 2 and 58, in Blaustein, ed., *Constitutions,* 163 and 178.

108. Stuart D. Goldman, "Russia: Toward a New Constitution," *Congressional Research Service,* Library of Congress, June 7, 1993, 17.

109. Constitution Watch—Russia, *East European Constitutional Review* 3 (Summer/Fall 1994): 19.

110. Secret presidential decree no. 2137, "On Measures to Reestablish Constitutional Law and Order in the Chechen Republic," Nov. 30, 1994. The decree was repealed in Dec. 1994.

111. A. Nagorski and R. Watson, "Yeltsin's Hollow Victory," *Newsweek,* Jan. 29, 1996, 32–33; B. W. Nelan, "Mr. Yeltsin's Ugly War," *Time,* Jan. 29, 1996.

112. D. Hoffman, "Yeltsin Says a 2nd Term Depends on Ending War," *Washington Post,* Feb. 9, 1996, A23.

113. Constitution Watch—Russia, *East European Constitutional Review* 4 (Summer 1995): 26.

114. Ibid.

115. Russian constitution, arts. 109 (3)–(5). Art. 109, secs. 3, 4, and 5, provide that the state Duma may not be dissolved for one year following its election, [or] during the period of operation of a state of martial law or state of emergency, [or] from the moment it filed the charges against the president.

116. Constitution Watch—Russia, *East European Constitutional Review* 4 (Summer 1995): 25–26.

117. Ibid., arts. 90, 115(3).

118. Ibid., art. 93.
119. Ibid., art. 95(2).
120. Constitution Watch—Russia, *East European Constitutional Review* 4 (Summer 1995): 27.
121. Ibid.
122. E. Jones and J. H. Brusstar, "Russia's Duma Elections," *National Defence Strategic Forum* (Nov. 1995): 1. Elections held Dec. 17, 1995, proved that a communist comeback throughout the region was an actuality when 157 seats went to communist deputies. Although Our Home Is Russia, the party supporting Yeltsin, formed the next largest bloc, it won only fifty-five seats. Bruce W. Nelan, "How Dark a Red Is He?" *Time,* Jan. 8, 1996.
123. "Constitutional Court Forms Two Houses," *Reuter Textline: BBC Monitoring Services,* CIS Feb. 17, 1995.
124. The Law on the Constitutional Court was passed by the State Duma in the second reading on June 24, 1994, the Federation Council approved it on July 12 and Yeltsin signed the Law on July 21. Constitution Watch. Russia. *East European Constitutional Review* 3 (Summer/Fall 1994): 19.
125. New Justices on the Russian Constitutional Court are: Vladimir Tumanov, Jury Nanilov, Vladimir Strekozov, Marat Baglai, Olga Hohryakova, Vladimir Yaroslavtsev. Ibid. (Spring 1995), 25; Russia: Federation Council to consider two candidates for last Constitutional Court positions, *Reuter Textline BBC Monitoring Service,* CIS Feb. 7, 1995.
126. *East European Constitutional Review* 4 (Summer 1995), 25.
127. Ibid., 23–25.
128. Ibid., art. 125 (4)–(5).
129. The constitutional court made its reputation by agreeing to hear a petition of thirty-seven people's deputies, representing the defunct Communist Party, who sought to overturn Yeltsin's banning of the party and the confiscation of its property following the Aug. 1991 coup. A group of anticommunist deputies responded with a countersuit charging the Communist Party with being an unconstitutional organization. Hearings began on July 7, 1992, and were widely commented on by the Western press when the court barred Mikhail Gorbachev from traveling abroad so as to compel his testimony at trial. See Russell Pipes, "The Past on Trial: Russia, One Year Later," *Washington Post,* Aug. 16, 1992; Michael Dobbs, "Court Bars Gorbachev from Travel," *Washington Post,* Oct. 3, 1992, A18; "Constitution Watch, Russia," *East European Constitutional Review* (Summer 1992), 7. On Oct. 27, 1992, Yeltsin banned another party, the National Salvation Front, charging it with the attempt to "overthrow the legally constituted authorities." As it was the case of Yeltsin's decree banning the Communist Party, his October ban on the National Salvation Front was challenged in the Constitutional Court. Dobbs, "Yeltsin, Citing 'Terrible Danger,' Bans Nationalist Opposition Front," *Washington Post,* Oct. 28, 1992, A18.
130. Russian constitution, art. 125(6).

131. Ibid., art. 136.
132. Yeltsin's speech.
133. Russian constitution, art. 7.
134. Ibid., arts. 8–9.
135. Ibid., art. 8(1). The constitution declared that "In the Russian Federation the unity of the economic area, the free movement of goods, services and financial resources, support for competition and freedom of economic activity are guaranteed."
136. In the time of the completion of this book the last concise reports on human right situation in East-Central Europe were of March 1995. However, they covered human rights practices only until 1994.
137. Ibid., art. 19(1)–(2).
138. Ibid., art. 29(2).
139. Human Rights and Democratization in the Newly Independent States of the Former Soviet Union, compiled by staff of CSCE, Jan. 1993, 39. Hereinafter CSCE Report.
140. Ibid., 40. The CSCE noted that the Jewish community in Moscow has had many problems with recovering property taken during the 1930s and 1940s.
141. Country Reports on Human Rights Practices for 1992, report submitted to Congress by Department of State, Feb. 1993, available in LEXIS, World Library, DState File). Hereinafter, USDS Report, 1993.
142. *Soviet Jewry News,* no. 749, Mar. 8, 1992, Israeli Consulate, New York City, cited in CSCE Report, 39.
143. "Explosion Wrecks Office in Russia," *Reuter Library Report,* Jan. 17, 1994, available in LEXIS, World Library, Reuter File.
144. The CSCE noted that "45 newspapers, weeklies, and periodicals with a distinctly anti-Semitic character, appear regularly in Russia and the former USSR." CSCE Report, 39. The U.S. State Department noted in its annual report to Congress that Pamyat's newspaper was "one of 30 Russian publications containing Fascist and anti-Semitic material." USDS Report, 1993, 892.
145. Vanora Bennett, "Russia: Russian Fascist Group Pamyat Denounces Zhirinovsky," *Reuter News Service*—CIS and Eastern Europe, Jan. 24, 1994, available in LEXIS, World Library, Reuter File.
146. Russia Human Right Practices, 1994, USDS Report, 1995.
147. USDS Report, 1993, 892.
148. Lerman Usmanov, "Does Holding Its Doors Closed Become Russia?" *Russian Press Digest,* Oct. 21, 1993.
149. USDS Report, 1993, 890.
150. Russian constitution, art. 28.
151. USDS Report, 1993, 890; CSCE Report, 34.
152. CSCE Report, 34.
153. USDS Report, 1993, 890.
154. Ibid.

155. CSCE Report, 34.
156. USDS Report, 1993, 890.
157. The Roman Catholic church has failed to regain most of its former property. For example, the Church of St. Louis, which is the only Catholic church operating in Moscow, was given to the French government rather than to the Catholic church in Moscow. CSCE Report, 35.
158. USDS Report, 1993, 890.
159. Ibid., 889.
160. CSCE Report, 30.
161. USDS Report, 1993, 889.
162. Ibid., March 1994 Report.
163. In Oct. 1992, Yeltsin prohibited the NSF after the organization advocated ousting "lawful authorities, including the President." USDS Report, 1993.
164. Ibid., 889–90.
165. Russian constitution, art. 27.
166. The law entered into force on January 1, 1993.
167. CSCE Report, 27–28.
168. Ibid., 28.
169. USDS Report, supra 1993, 891.
170. The Russian constitution provides, however, that "each person who is legally present on the territory of the Russian Federation has the right to . . . choose his place of . . . residence." See Russian constitution, art. 27(1).
171. USDS Report, 1995.
172. Russian constitution, art. 29(4)–(5). "(4) Each person has the right freely to seek, receive, pass on, produce and disseminate information by any legal method. The list of information constituting a state secret is determined by federal law. (5) The freedom of mass information is guaranteed."
173. Ibid., art. 29(1): "(1) Each person is guaranteed freedom of thought and speech."
174. Ibid., art. 29(5).
175. USDS Report, supra 1993, 888.
176. CSCE Report, 36.
177. Ibid. Because of the severe economic situation, numerous newspapers, both large and small, have been forced to close or to reduce circulation. *Pravda*, which was the mouthpiece for the Communist Party, had to stop publishing for three weeks and was eventually purchased by a Greek publisher in Sept. 1992.
178. See USDS Report, 1993, 888; CSCE Report, 36.
179. For instance, in 1992 the minister of press and information filed charges against Sovietskaya Rossiya for advocating the ousting of the government. See USDS Report, supra 1993, 888. The minister also threatened to close Nezavismaya Gazeta for printing an article that mentioned a possible nuclear attack on Ukraine by Russia. CSCE Report, 37.

180. U.S. Department of State Report, March 1995.
181. CSCE Report, 38.
182. Ibid., 37.
183. Mike Trickey, "Yeltsin Keeps Ban on Papers Supporting Opposition," *Gazette* (Montreal), Oct. 15, 1993, D14.
184. CSCE 1995 Report, 38.
185. Ibid., 30; USDS Report, 1995.
186. Press conference By Vil Mirazayanov, "Who Is Charged with Revealing Alleged State Secrets?" official Kremlin international news broadcast, Jan. 26, 1994.
187. USDS Report, 1995; CSCE Report, 30.
188. Vladimir Orlov, "Russia's Level of Freedom: Between Thailand and Panama," *Moscow News,* Feb. 24, 1993.
189. USDS Report, 1993, 885.
190. CSCE Report, 26.
191. Fred Hiat, "Russian Reformers Warn of Fascism," *Washington Post,* Dec. 14, 1993, A1.
192. USDS Report, 1995. In fact, this possibility proved true when in December 1993 the human rights commissioner, Sergey Kovalev, accused "Russian troops of violating human rights on a 'massive scale' in Chechnya."
193. See "American Bar Association Central and East European Law Initiative Reports," Washington, D.C., Mar. 1–8, 1992.
194. See *CEELI Update,* June 1992, 5.
195. "Constitution Watch, Lithuania," *East European Constitutional Review,* Summer 1992, 5.
196. Michael Dobbs, "Ex-Communists Win Elections in Lithuania," *Washington Post,* Oct. 27, 1992, A21.
197. "ABA CEELI Reports." Assessing the second Lithuanian draft, William Wagner, workshop participant, wrote that already in many ways the draft "reflects a far deeper and more natural grasp of the principles of constitutional democracy than has been the case in some other constitutional drafts emerging in East and Central Europe."
198. Arts. 5 and 40 of Lithuanian draft constitution, Feb. 26, 1992, printed in "ABA CEELI Reports."
199. Arts. 5 and 55, constitution of the Republic of Lithuania, approved in Oct. 25, 1992, referendum pub. in Vilnius, Nov. 6, 1992.
200. Ibid., art. 5.
201. See comments on the system of state governance in the Lithuanian draft constitution, Feb. 1992, presented to CEELI workshop by Rett R. Ludwikowski (CEELI's archives), 7–9.
202. Lithuanian constitution, art. 90.
203. Alex N. Dragnich and Jorgen Rasmussen, *Major European Governments* (1992), 404–6. Trying to explain the rationale, of these institutions Alex N. Dragnich and Jorgen Rasmussen wrote, "The underlying idea is to prevent a negative majority, of

say, the extreme left and the extreme right, from voting a Government out of office when all they can agree upon is that they do not like what the Government has been doing. Therefore, in Germany a chancellor defeated in the Bundestag, even by an absolute majority, is not required to resign. The only way the Bundestag can force a chancellor from office is to designate a successor by an absolute majority."

204. "Upon the expiration of the six-months period, the Provisional Government shall either resign or submit a program to the Seimas requesting that the Seimas consider and resolve the question of confidence in this Government. Upon the resignation of the Provisional Government, the formation of a new Government shall be carried out according to the procedure established by the Constitution." See Lithuanian draft constitution, art. 91.

205. The constitution of 1992 requires a simple majority for adoption of a statute and a qualified majority of three-fifths for adoption of a constitutional law. For more details, compare art. 63 of 1992 Lithuanian draft constitution and art. 72 of the 1992 constitution of Lithuania.

206. Ibid., art. 85.

207. Ibid., art. 58. Pre-term election may also be held on the decision of the Seimas adopted by a three-fifths majority.

208. Christian Luckey, "Table of Twelve Electoral Laws," *East European Constitutional Review* 3 (Spring 1994): 72–75.

209. For this section wide use was made of information collected by International Conference on Rules of Procedure and Parliamentary Practice, Lithuania Puttusk, May 8–11, 1994, 2.

210. Ibid., 3.

211. Luckey, "Table of Twelve Electoral Laws," 72.

212. "Constitution Watch," *East European Constitutional Review* 3 (Spring 1993): 9.

213. Several Western constitutional experts in commenting on 1992 draft pointed out that without further refinement the court would be "exceedingly busy" as it would operate mostly as an advisory organ. In fact, at least one court function seemed to be dropped by the drafters of the final 1992 constitution: the Lithuanian constitution will not settle disputes between local and central governmental agencies or disputes regarding the constitutionality of political parties. See the comments of Mary Jane Morrison, Hamline University School of Law, and Cass R. Sunstein, Karl N. Llewellyn Professor of Jurisprudence, the Law School and Department of Political Science, University of Chicago, at the Follow-Up CEELI Technical Legal Assistance Workshop on the Draft Lithuanian Constitution, Washington, D.C., Mar. 1–8, 1992.

214. Russians, Poles, Belarusians, Ukrainians, and Jews make up only about 20 percent of Lithuania's total population. State Department Report, 834. For comparison, the 1935 census indicated that Latvia's ethnic composition was 77 percent Latvian, 9 percent Russian, 5 percent Jewish, 3.3 percent German, and 1.4 percent Belarusian. The mass migration of "Slavic Soviet citizens" during the Soviet occupation of Latvia reduced Latvians to barely a majority (52 percent) today. See "Human Rights and Democratization in Latvia," report prepared by the CSCE, Sept. 1993, 3.

215. See Nikolai Laskevich, "Russians in Lithuania: What Kind of Help They Need," *Russian Press Digest,* July 17, 1993.
216. Court's Ruling of Jan. 25, 1995, *East European Constitutional Review* 4 (Spring 1995): 17.
217. *East European Constitutional Review* 4 (Summer 1995): 15.
218. USDS Report, 1995.
219. Ibid.
220. Ibid.
221. In July 1993, parliament rejected the proposal of the Lithuanian Democratic Labor Party to grant citizenship to the descendants of prewar Lithuanian citizens, including those who hold citizenship in other countries. The rationale for the rejection was parliament's limitation on claims for property restitution only to those who recently elected to become permanent residents of Lithuania. See "Constitution Watch," *European Constitutional Review* (Summer 1993): 12.
222. USDS Report, 1993, 834.
223. Ibid., 835. Some ethnic minorities (especially the Poles) have complained of job discrimination resulting from the language law.
224. Ibid., 834–35.
225. USDS Report, 1995.
226. Ibid., 831–36. Similar conclusions were reached in the U.S. State Department Report of 1995.
227. *East European Constitutional Review* (Spring 1992): 5.
228. Ibid.
229. Ibid. (Summer 1992): 3.
230. Ibid.
231. "Constitutional Assembly Completes Draft Constitution," printed in BBC, World Broadcasts, April 24, 1992.
232. *East European Constitutional Review* 4 (Summer 1995): 9.
233. *East European Constitutional Review* (Summer 1992): 3.
234. Ibid.
235. Constitution of the Republic of Estonia, art. 79.
236. Ibid., arts. 109, 110.
237. Ibid., art. 107.
238. Ibid., art. 85.
239. Arts. 59 and 60 of the draft constitution of the Republic of Estonia, U.S. Department of Commerce, Central and Eastern Europe Legal Texts, June 19, 1992. Hereinafter Draft Constitution of Estonia.
240. Christian Luckey, "Comparative Chart of Electoral Regimes," *East European Constitutional Review* 3 (Spring 1994): 69–71.
241. The Hare system, named for nineteenth-century political reformer Thomas Hare, involves dividing each party's vote by the natural quota (votes/seats) or by a fixed electoral quota. The fixed quota is fixed for all constituencies, while the natural quota may change from constituency to constituency. This system allows the voters to

rank candidates in order of preference. George S. Swan and Lani Guinier, "Proportional Representation: A Speculative Rationale for State Bicameralism," *Hamline Journal of Public Law and Policy* 15: 55, at 75.

242. The d'Hondt method allocates seats to the party that shows the highest average of votes per seat. Each party's total vote is divided by the number of seats it has already won, plus 1. For a detailed explanation of how this system is used in Germany, see Alex N. Dragnich and Jorgen Rasmussen, *Major European Governments* (1992), 366–67, and Uwe Kitzinger, "The West German Electoral Law," *Parliamentary Affairs* 11 (Spring 1958): 220–37.

243. Luckey, "Table of Twelve Electoral Laws."

244. "International Conference Rules of Procedure and Parliamentary Practice, Pultusk, 8–11 May 1994," 3–4.

245. Constitution of Estonia, art. 63.

246. For further examination of the legislative procedure, see "International Conference Rules of Procedure," 4.

247. Constitution, art. 142.

248. Constitution, art. 97.

249. *East European Constitutional Review* 4 (Spring 1995): 11.

250. Tiit Vahi's government was formed on April 17, 1995. Ibid.

251. Until the spring of 1995, reporters commented on sixteen cases decided by the national chamber. For comments on these cases, see ibid., 4 (Spring 1995), and 4 (Summer 1995).

252. Further reference to "Russians" is intended to indicate the non-Estonian segment of Estonia's population. Therefore, the term refers not only to ethnic Russians, but to Ukrainians, Jews, and other ethnic minorities who are often called the "Russian-speaking population" because many of them either do not speak Estonian or speak it poorly. For further explanation, see "Russians in Estonia: Problems and Prospects," report prepared by staff of the CSCE, Sept. 1992.

253. "Human Rights and Democratization in Estonia," prepared by staff of the CSCE, Sept. 1993, 8.

254. From 1945 until 1959 some 280,000 non-Estonians moved to Estonia, causing the ratio of Estonians to drop from 90 percent in 1934 to 63 percent in 1991. Ibid., 9.

255. CSCE, "Russians in Estonia," 3.

256. Ibid.

257. Ibid.

258. Ibid. The CSCE sent a delegation to Estonia in Sept. 1992 to assess the situation of Russians living there and to investigate the motivations behind and potential ramifications of Estonia's express decision to deny citizenship and the right to vote to 40 percent of its population.

259. Ibid., 5. The CSCE further noted that while denial of the vote in the 1992 Estonian elections to ethnic Russians was widely covered by foreign media, that issue "did not play a major role in the campaign."

260. Ibid., 6.

261. Ibid., 1.
262. Ibid., 7.
263. Ibid., 9.
264. Ibid., 11.
265. USDS Report, 1993.
266. CSCE Report of 1992.
267. USDS Report, 1995.
268. Ibid.
269. A. Karatnycky, "The Ukrainian Factor," *Foreign Affairs* (Summer 1992): 90.
270. "Analysis of the Constitution of Ukraine," ABA CEELI Report, July 14, 1992.
271. *East European Constitutional Review* (Spring 1993): 14.
272. "Ukraine: Ukraine Delays Adoption of Constitution," *Reuter Textline,* May 15, 1993.
273. "Ukraine: Parliament to Debate Draft Constitution in June," *Reuter Textline,* May 19, 1993.
274. "Ukraine: Kravchuk Praises New Draft Constitution at Symposium," *Reuter Textline,* June 22, 1993.
275. "Ukraine: Parties Call for Constitutional Assembly" and "Ukraine: Resolution of Referendum," *Reuter Textline,* Aug. 28, 1993.
276. The draft subject to analysis is dated June 1992.
277. Amendments proposed by one-third of the members of both houses have to be approved by at least two-thirds of each house of the national assembly. "Draft Constitution of Ukraine," June 10, 1992, arts. 256–57.
278. "Analysis of the Constitution of Ukraine," supra note 270, 1.
279. "Draft Constitution of Ukraine," art. 1.
280. Ibid., art. 115.
281. Ibid., arts. 64, 65. Article 64 reads: "The state shall be subordinated to and serves the civil society. . . ." Article 65 states: "The state shall not infringe on the affairs of persons and of society. . . . State regulation of societal relationships shall be confined within the borders defined by this constitution. Executive and legislative power shall be limited by the law."
282. Ibid., art. 5.
283. Ibid., art. 175 and art. 178, § 11.
284. During May 1995 the compromise between the president and parliament made possible the adoption of a new law on presidential powers, which dropped provisions that allowed parliament to impeach the president and, at the same time, permitted the president to dissolve parliament. *East European Constitutional Review* 4 (Summer 1995): 32.
285. "Analysis of the Constitution of Ukraine," supra note 270, 8.
286. "Draft Constitution of Ukraine," art. 203.
287. For a description of the functions of economic courts in a socialist state, see M. A. Glendon, M. W. Gordon, and Chris Osakwe, *Comparative Legal Traditions* (1985), 765–72.

288. "Draft Constitution of Ukraine," art. 205.

289. For a more detailed explanation of the German model of judicial review, see chap. 4, pt. F, "Judicial Enforcement of the Constitutions, Origins and Major Models of Judicial Review."

290. It resembles provisions of art. 93 of the German basic laws, which granted the German federal constitutional court the abstract power to review the constitutionality of federal and Land law when petitioned by federal or Land government or one-third of the Bundestag. *Grundgesetz* (Constitution) [GG], art. 93 (FRG).

291. "Draft Constitution of Ukraine," art. 100.

292. Ibid.

293. Ibid., art. 243.

294. *East European Constitutional Review* (Summer 1994): 23–25.

295. Ibid. (Spring 1995): 33.

296. In fact, after this chapter was completed, a new draft of the Constitution of Ukraine was prepared by the Working Subcommission of the Constitutional Commission of Ukraine. The draft, dated February 24, 1996, was translated in English by the International Foundation for Election Systems. For the analysis of the 1996 Draft see Central and East European Law Initiative's Report "Preliminary Analysis of the Separation of Powers Provisions of the Draft Constitution of Ukraine," May 13, 1996.

297. The brief report identifies Ukraine's most troublesome areas in human rights protection. However, additional time and effort by monitoring organizations are needed to more accurately evaluate Ukraine's actual record on human rights.

298. USDS Report, 1993.

299. Ibid. The State Department reported that visitors to Ukrainian prisons have characterized the conditions as "severely substandard." Moreover, little has been done to improve things, and authorities have declined to address the issue "with foreign governments, other Ukrainian government bodies, human rights groups or Ukrainian civic organizations."

300. "Country Reports on Human Rights Practices for 1993," report submitted to Congress by the Department of State, Feb. 1994 (available on LEXIS, World Library, DState File). Hereinafter USDS Report, 1994.

301. CSCE Report, 50.

302. Ibid., 51–52.

303. Ibid., 53.

304. Ibid., 53.

305. Ibid., 61.

306. Ibid., 52. The 1991 law on Ukrainian citizenship provided that "the right of citizenship is an inalienable human right. No one may be deprived of citizenship or the right to change citizenship." The law imposed no residency requirements on those living in Ukraine, essentially bestowing Ukrainian citizenship on all who lived in Ukraine and were not citizens of another country.

307. Ibid., 62.
308. Ibid.
309. Ibid., 63.
310. Ibid.
311. Ibid., 51. Rukh motivated the July 1990 Declaration of State Sovereignty of Ukraine. In its 1989 party platform, one of Rukh's goals was the transformation of "Ukraine into a law-based society, and the centrality of human rights."
312. USDS Report, March 1995.
313. USDS Report, 1994.
314. Ibid.
315. USDS Report, 1994.
316. CSCE Report, 55.
317. Ibid.
318. Ibid.
319. USDS Report, 1995.
320. ABC-Clio Kaleidoscope, Country: Belarus, Aug. 21, 1992.
321. "Analysis of the Draft Constitution of the Republic of Belarus," Aug. 28, 1992.
322. The commentators noted that the change of parliament's name signified a tendency to associate Belarus more closely with communist traditions. Deputies also decided to increase the seats from 160 to 240. See *East European Constitutional Review* (Summer 1993): 3.
323. "Belarusian Draft Constitution," reprt. ABA CEELI Report, Aug. 28, 1992.
324. For more detailed comments on the French model of government, see p. E: chap. 4, "Presidential vs. Parliamentary System."
325. See J. Foyer, *The Drafting of the French Constitution of 1958: Constitution Makers on Constitution Making*, ed. R. Goldwin and A. Kaufman (1988), 19; see also "Belarusian Draft," art. 102.
326. Foyer, *Drafting of French Constitution*, 19.
327. ABA CEELI Report, 1.
328. "Belarus: Deputies on 17th June Vote for Strong Presidential Power," *Reuter Textline*, June 23, 1993.
329. *East European Constitutional Review* (Spring 1993): 2.
330. For a more detailed analysis of the models of judicial review see p. F, chap. 4: "Judicial Enforcement of the Constitutions."
331. Comments of Judge John P. Fullam, ABA CEELI Report, 2–3. See also USDS Report, 1995.
332. Ibid., comments of Judge Barbara Milano Keenan, Supreme Court of Virginia.
333. *East European Constitutional Review* (Spring 1993): 2–3.
334. Ibid. (Summer 1993): 3.
335. "Belarus: Belarussia—Shushkevich on the No-Confidence Vote and the Need for New Constitution," *Reuter Textline*, July 8, 1993.
336. *East European Constitutional Review* (Spring 1993): 2.

337. Belarussian constitution, BBC, World Broadcasts, Mar. 15, 1994.
338. Ibid., art. 8.
339. Ibid., art. 73 of the draft; art. 74 of the constitution.
340. Ibid., art. 82 of the draft; art. 80 of the constitution.
341. Ibid., art. 100 of the draft; art. 98 of the constitution.
342. James Rupert, "Strong Turnout in Belarusian Election Is Defeat for Authoritarian President," *Washington Post,* Dec. 11, 1995.
343. Ibid.
344. Ibid., art. 127 of the constitution.
345. CSCE Report, 76.
346. Ibid., 77.
347. USDS Report, 1994.
348. Ibid.
349. People's deputies are immune from criminal prosecution but not from prosecution under the slander laws, which are part of the civil code.
350. Ibid.
351. USDS Report, 1995.
352. See CSCE Report, 78; also ibid.
353. CSCE Report, 78.
354. Ibid.
355. USDS Report, 1995.
356. See CSCE Report. After the ban on it was repealed in Feb. 1993, the Communist Party was also permitted to operate freely.
357. Ibid.
358. Ibid.
359. USDS Report, 1995.
360. Ibid., 81.
361. Ibid.
362. USDS Report, 1994.
363. CSCE Report, 80.
364. USDS Report, 1994.
365. Ibid.
366. Ibid.
367. CSCE Report, 82.
368. Georgia's President Zviad Gamasakhurdia was forced to flee Tbilisi in Jan. 1992, Azerbaijan's Ayaz Mutalibov was toppled in May 1992, and Tajik President Rakhman Nabijev in Sept. 1992. See "Tajik President Resigns in Opposition Custody," *Washington Post,* Sept. 8, 1992, A14; see also "Spread of Ethnic Wars Feared in Ex-USSR," *Washington Post,* Sept. 9, 1992, A25. See also Martha Brill Olcott, "Central Asia's Catapult to Independence," *Foreign Affairs* (1992): 108–30.
369. See Olcott, "Central Asia's Catapult," 108.
370. Ibid.

371. "The Republic Acquires a Constitution," RUSSICA Information, Inc.—RusData DiaLine, Russian Press Digest, Jan. 30, 1993.
372. The new constitution of Azerbaijan was adopted by the referendum held on Nov. 12, 1995. However, as of the spring of 1996, its text was still unavailable. See "Iranians Protest New Constitution in Azerbaijan," 1995 *Agence France Presse,* Nov. 25, 1995.
373. The texts subject to analysis are the constitution of Kazakhstan, Jan. 28, 1993; the concept for the constitution of the Republic of Azerbaijan (undated, submitted to CEELI for evaluation, July 1992); and the constitution of the Kyrghyz Republic, May 5, 1993. Kirghizstan's draft, used for this study, has been prepared by L. I. Levitin, S. Kosakov, and M. Cholnobayev, with the participation of D. Narymbayev and M. Ukushov. The draft was published in the Kirghizstan's press and submitted to the supreme soviet of Kyrghyzstan together with alternative versions drafted by the Democratic Movement. As the deputies divided into two camps supporting two different versions of the draft, the supreme soviet postponed the constitution's adoption. See ITARTASS news agency, Moscow, World Service, July 24, 1992; see also BBC, World Broadcasts, July 27, 1992.
374. Kyrghyz constitution, art. 47, no. 4/2; Kazakhstani constitution, art. 78 no. 2. The Azerbaijani draft simply declares that "the President makes use of the right to veto legislation."
375. The Kazakhstani constitution (arts. 85–88) makes the cabinet of ministers politically accountable to the president and constitutionally accountable to parliament. The drafters reserved for parliament the right to dismiss a minister, with the president's consent, when violations of the constitution or the laws of the republic occur. See also Kyrghyz constitution, art. 47, no. 4/6. The Azerbaijani draft is less explicit. It provides that the president appoints the cabinet with "subsequent confirmation" of parliament and that "the President carries out functions regarding the execution of laws and is in charge of the activities of the Cabinet of Ministers."
376. The tendency to incorporate a kind of American system of checks and balances is clearly visible in the new Kazakh constitution. The 1993 basic law provides that Kazakhstan is a presidential republic; however, parliament has broad powers as well. For example, parliament can amend the constitution, change the nation's borders, approve the budget, and elect higher court judges. "Republic Acquires Constitution."
377. USDS Report, 1994.
378. Ibid.
379. Ibid.
380. Ibid.
381. Ibid.
382. USDS Report, 1995.
383. USDS Report, 1994.
384. USDS Report, 1993.

385. Through registration and other practices, the government still tries to control the elections. The elections held in Kazakhstan on Mar. 8, 1994, received many critical comments from U.S. and European observers. They noted that, while failing to control cheating, the government clearly sponsored some candidates. Jan van Houwelingen concluded that the elections "did not meet internationally accepted standards for pluralistic democratic elections." Steve LeVine, "International Observers Condemn Kazakhstan's Parliamentary Elections," *Washington Post*, Mar. 9, 1994, A12.
386. USDS Report, 1994.
387. President Abulfez Elcibey, who was democratically elected, was ousted in June 1993. Heydar Aliyev, a former Communist Party first secretary and Soviet Politburo member, assumed presidential powers following a period of intense domestic turbulence.
388. President Elcibey's downfall partly resulted from the APF government's failure to hold parliamentary elections. A referendum on Aug. 29 confirmed the lack of public confidence in Elcibey, and Aliyev won the presidential election held on Oct. 3, 1993. USDS Report, 1994.
389. Ibid.
390. Ibid.
391. Ibid.
392. USDS Report, 1995.
393. Ibid.
394. CSCE Report, 115.
395. USDS Report, 1994.
396. Ibid.
397. Ibid.
398. Ibid.
399. CSCE Report, 115.
400. Ibid., 203–4.
401. USDS Report, 1994. For instance, of the 360 deputies in the Supreme Soviet, only eighty are ethnic minorities.
402. Ibid. About half of ethnic Kazakhs can speak their language, while most of the population speaks Russian. Although Kazakh has been declared the official language as of Jan. 1993, Russian is considered the "language of interethnic communication," and a "transition period" takes place during which individuals can learn Kazakh.
403. USDS Report, 1995.
404. Ibid.
405. CSCE Report, 170.
406. Ibid.
407. USDS Report, 1993.
408. Ibid.
409. Ibid.
410. "Stephen Sestanovich, Russia Turns the Corner," *Foreign Affairs* 73 (Jan./Feb. 1994): 97–98.

4 Constitution-Drafting in the Former People's Republics of East-Central Europe

1. Ivo Banac, ed., *Eastern Europe in Revolution* (1992), 13.
2. M. N. Todorova, "Improbable Maverich or Typical Conformist? Seven Thoughts on the New Bulgaria," in I. Banac, ed., *Eastern Europe in Revolution,* 149–50.
3. Mary Battiata, "Bulgaria's Zhivkov Quits After 35 Years, *Washington Post,* Nov. 11, 1989, A1.
4. Ibid.
5. "Union of Democratic Forces Sets Out Its Aims," BBC, World Broadcasts, Dec. 9, 1989.
6. "Bulgaria Tumbles Communist Monopoly," *Los Angeles Times,* Jan. 15, 1990, P2.
7. Todorova, "Improbable Maverick," 165.
8. The result was repeated in March and April 1991 when Albanian multiparty elections resulted in the Communist APL winning more than a two-thirds parliamentary majority.
9. President Mladenov was forced to resign on July 6, 1990 because of a publicly revealed videotape that showed him calling for tanks to be used against demonstrators in Dec. 1989. See "Bulgaria Chief Quits," *Los Angeles Times,* July 6, 1990, P1.
10. "Bulgaria Picks Non-Communist," *Los Angeles Times,* Aug. 1, 1990, P2.
11. "Bulgarian Socialist Party Nominates Lukanov for Prime Minister," *Reuters,* June 30, 1990.
12. "Bulgarians Rally to Support Strike for Democracy," *Reuters,* June 25, 1991.
13. Arthur S. Banks, ed., *The Political Handbook of the World* (1991), 90.
14. "Judge Chosen as Bulgaria's Prime Minister," *Los Angeles Times,* Dec. 7, 1990, P3.
15. "Bulgaria Gets Few Points for Progress," *Chicago Tribune,* Oct. 25, 1991, C1.
16. "Final Official General Election Results," BBC, World Broadcasts, Oct. 23, 1991.
17. By a vote of 131 to 94, parliament chose Philip Dimitrov, a lawyer and leader of the UDF, as Bulgaria's new prime minister. See "Dimitrov Elected Bulgarian Prime Minister," *United Press International,* Nov. 8, 1991.
18. Zhelev did win 53 percent of the vote, Valkanov 46.6 percent. "Bulgarians Endorse Reform," *Financial Times,* East European markets, Jan. 24, 1992.
19. Vessela Sergueva, "Crisis Looms Large in Bulgaria," *Middle East News Network,* Sept. 13, 1992.
20. Ibid.
21. "Coalition Should Not Affect Reform," *Financial Times,* Nov. 19, 1992.
22. Chris Stephen, "Bulgarian Party Will Not Drop P.M.," *Guardian,* Nov. 12, 1992.
23. "MRF Refuses to Form Coalition with the UDF," BBC, World Broadcasts, Nov. 21, 1992.
24. Decision of Bulgarian Constitutional Court No. 20 on Creation and Tenure of New Government of 12/92. 1992 U.S. Dept. of Commerce—NTIS, Central and Eastern Europe Legal Texts, Dec. 1992.

25. Ibid.
26. "Zhelev Begins Consultations on Forming Cabinet," BBC, World Broadcasts, Nov. 27, 1992.
27. "Bulgarian PM-Designate Hits Nationality Snag," *Reuter Library Report,* Dec. 10, 1992.
28. Elizabeth Konstantinova, "Bulgarian Turks' Nominee Asked to Form New Government," *Reuter Library Report,* Dec. 1, 1992. Liliana Semerdjieva, "Ex-Communists, Ethnic Turks Elect New Bulgarian Premier"; "Bulgaria Elects Prime Minister Nominated by Turks," both *Reuter Library Report,* Dec. 30, 1992.
29. "Berov Issues Policy Declaration," BBC, World Broadcasts, Dec. 10, 1992.
30. "Bulgarian Government Adopts Mass Privatization Plan," *Reuter Textline,* BBC Monitoring Service: Eastern Europe, Aug. 4, 1993; "Sink or Swim Bulgarian Privatization," *Reuter Textline,* Euromoney Central European, Sept. 1, 1993; "Bulgarian's Privatization Agency Chief Sacked," *Reuter Textline,* Reuter News Service—CIS and Eastern Europe, Aug. 24, 1993.
31. "Zhelev Criticizes Cabinet Over Slow Privatization," *Reuter Textline,* BBC Monitoring Service: Eastern Europe, Sept. 15, 1993.
32. "Bulgarian Opposition Proposes No-Confidence Vote," *Reuter Textline,* Reuter News Service—CIS and Eastern Europe, July 14, 1993.
33. "Bulgaria: Support for President Slipping—More Bulgarians Want Fresh Elections," *Reuter Textline,* BBC Monitoring Service, Sept. 17, 1993.
34. *East European Constitutional Review* 4 (Winter 1995): 7–8.
35. Ibid. (Summer 1995): 5.
36. Ibid.
37. Constitution of the Republic of Bulgaria, U.S. Dept. of Commerce, July 13, 1991, at preamble, arts. 1, 4, 5, 8, 11, 24/2, chap. 2 (Fundamental Rights and Obligations of Citizens).
38. Ibid., art. 2(2). The text of the 1917 constitution is in William B. Simons, *The Constitutions of the Communist World* (1980), 38–67.
39. Bulgarian constitution, art. 8.
40. Ibid., art. 1.
41. Bulgarian constitution, arts. 93(1), 68(2).
42. For an explanation of the French model, see part E, chap. 4: Presidential vs. Parliamentary System.
43. Ibid., arts. 92(1), 99.
44. Ibid., art. 101(1, 2).
45. Ibid., art. 102(1, 2, 3).
46. Ibid., art. 84(12).
47. Ibid., art. 98(1).
48. USDS Report, 1991.
49. Bulgarian constitution, arts. 119(1), 124, 125.
50. Ibid., arts. 129, 130.
51. *East European Constitutional Review* 4 (Winter 1995): 6.

52. For a more detailed explanation of the French constitutional model, see part E, chap. 4: Judicial Enforcement of the Constitutions.
53. Bulgarian constitution, arts. 149–52.
54. Rumyana Kolarova, "A Self-Restricting Court," *East European Constitutional Review* (Spring 1993): 50.
55. Bulgarian constitution, art. 26(2).
56. Ibid., art. 57 (1)–(2).
57. Ibid., art. 48(1).
58. Ibid., art. 19(1).
59. Ibid., arts. 21, 22(1).
60. USDS Report, 1993.
61. Ibid.
62. "CSCE Report on Implementation of the Helsinki Accords: Human Rights and Democratization in Bulgaria," Sept. 1993, 1. Available from CSCE. Hereinafter CSCE Report: Bulgaria.
63. Ibid., 5.
64. USDS Report, 1995.
65. Ibid., 13. The total population of Bulgaria by the 1992 estimate was 8,472,700.
66. Bulgarian constitution, arts. 4(2), 6(1)–(2), 26 (1)–(2).
67. CSCE Report: Bulgaria, 9.
68. Ibid., 10.
69. Ibid., 11.
70. A leader of the Movement of Rights and Freedoms (MRF), Ahmed Karaali, stated that the Turks had come a long way since 1989 and the downfall of the communists. Karaali pointed out that the Turks "have restored all the rights taken from [them]. [Their] mosques are open, circumcision is permitted, [they] can speak Turkish, [they] have restored [their] Turkish names, and can again wear traditional Muslim clothes." Moreover, a new law provides for the return of homes to those who had been forced to give up their possessions during the forced assimilation campaign. See Mike Power, "Bulgaria: Country's Muslim Minority Enjoys Peaceful Resurgence," *Guardian,* June 17, 1992.
71. Bulgarian constitution, arts. 43(1), 44(1).
72. CSCE Report: Bulgaria, 6.
73. Ibid., art. 44.
74. Ibid., art. 11(4).
75. Ibid., art. 12(2).
76. "USA: Ambassador Wants Changes to Bulgarian Constitution," *Reuter Textline,* Reuter News Service—United States, Oct. 8, 1993. The statement of Ambassador Montgomery caused a disturbance in the Bulgarian media, which stated that "Bulgaria is a sovereign state and no one can dictate what [it] should do" and accused Montgomery of trying to interfere with Bulgaria's domestic affairs. Despite this reaction, the U.S. State Department confirmed that Montgomery's comments "accurately reflected the department's views." Philippa Fletcher, "Bulgaria: U.S. Sofia Envoy

Moves to Defuse Over Ethnic Rights," *Reuter News Service*—CIS and Eastern Europe, Oct. 11, 1993. See also "Bulgaria: Presidential Advisor Says Ban on Ethnically-Based Parties 'Discriminatory,'" BBC Monitoring Service: Eastern Europe, *Reuter Textline,* June 15, 1993.

77. USDS Report, 1993.

78. Arts. 11 and 12 of the Bulgarian constitution were also used to deny registration to the Democratic Roma Union as a political party, even though membership in the union is open. In Oct. 1992 the union reemerged under the name "United Roma Organization" (URO). Ibid.

79. "Bulgaria: Gypsy Union Protests Against Discrimination and Violations of Human Rights," BBC Monitoring Service: Eastern Europe, June 25, 1993.

80. Ibid.

81. Amnesty International Annual Report Entry 1993: Bulgaria.

82. USDS Report, 1995.

83. CSCE Report: Bulgaria, 7.

84. Bulgarian constitution, art. 13(1).

85. CSCE Report: Bulgaria, 7.

86. USDS Report, 1993.

87. Bulgarian constitution, art. 13(3).

88. CSCE Report: Bulgaria, 8.

89. Ibid.

90. USDS Report, 1993.

91. CSCE Report: Bulgaria, 8.

92. USDS Report, 1993.

93. USDS Report, 1995.

94. CSCE Report: Bulgaria, 7.

95. Bulgarian constitution, art. 35(1).

96. Ibid., art. 35(2).

97. Ibid., art 25(4).

98. Ibid., art. 25(3).

99. Ibid., art. 40(1).

100. USDS Report, 1995.

101. CSCE Report: Bulgaria, 6.

102. Ibid. See also Rumyana Kolarova and Dimitri Dimitrov, "Media Wars in Sofia," *East European Constitutional Review* (Summer 1993): 48–51.

103. CSCE Report: Bulgaria, 23.

104. Celestine Bohlen, "Bucharest Says Entire Politburo Ruled by Ceaucescu Is in Custody," *New York Times,* Jan. 3, 1990, A1.

105. Celestine Bohlen, "Interim Rumanian Leaders Named as Fighting Subsides," *New York Times,* Dec. 27, 1989, A1.

106. Celestine Bohlen, "Rumania Moving to Abolish Worst of Repressive Era," *New York Times,* Dec. 28, 1989, A1.

107. Celestine Bohlen, "Rumania's Rulers Agree to Share Power," *New York Times,* Feb. 2, 1990, A1.
108. These requirements included at least 251 members, a deposit in a bank of at least $1,100, an address, a platform, and a set of bylaws. By Feb. 1, 1990, twenty-nine parties had met the requirements. See Celestine Bohlen, "Upheaval in the East: Question in Bucharest: Who's in What Party?" *New York Times,* Feb. 3, 1990, A8.
109. Ibid.
110. "Choosing a New Rumanian Leader," *New York Times,* May 20, 1990, sec. 1, 16.
111. "Final Election Results," BBC, World Broadcasts, May 28, 1990.
112. "Rumanian President Pledges Freer Markets," *Chicago Tribune,* May 26, 1990, sec. C, 4.
113. "Rumanian Elections Show 'Predominance of Left-Wing Forces,'" BBC, World Broadcasts, May 30, 1990.
114. Katherine Verdery and Gail Kligman, "Romania after Ceausescu: Post-Communist Communism?" in Ivo Banic, ed., *Eastern Europe in Revolution* (1992), 130.
115. Ibid., 133–34.
116. Adrain Dascalu, "Rumanian Communist Party Reappears Under New Name," *Reuters,* Nov. 18, 1990.
117. "Protests Mark Launch of New Rumanian Party," *Reuters,* Nov. 19, 1990.
118. "Rumanian Miners Hold Out for President's Resignation," *New York Times,* Sept. 28, 1991, sec. 1, 3.
119. "Romania: Stolojan's Quick-Step," *Eastern Europe Newsletter,* Nov. 18, 1991, 6, 7.
120. "Anatomy of Romania's Centrist Opposition Alliance," *Reuters,* Sept. 25, 1992.
121. "Romania Election Briefing," *Eastern Europe Newsletter,* Sept. 7, 1992, 2.
122. "Romania: Waiting for E-Day," *Eastern Europe Newsletter,* May 11, 1992, 6.
123. "Rumanian President Calls for 'Exceptional Measures' Against Crime," UPI, Oct. 13, 1992.
124. "Romania: After the Victory, a Deluge?," *Eastern Europe Newsletter,* Oct. 5, 1992.
125. "Tough Times Ahead for New Rumanian Premier," *Agence France Presse,* Nov. 5, 1992.
126. "Nicolae Vacaroiu Named as New Rumanian Premier," BBC, World Broadcasts, Nov. 5, 1992.
127. "Romania's Ex-Ruling Party Forms Shadow Cabinet," *Reuters,* Jan. 7, 1993.
128. Peter Humphrey, "Romania Opposition Formally Submits Confidence Motion," *Reuter Library Report,* March 12, 1993.
129. Peter Humphrey, "Rumanian Government Survives No-Confidence Vote," *Reuter European Business Report,* March 19, 1993.
130. Ibid.
131. Adrain Dascalu, "Romania's Former Ruling Party to Change Name," and "Ro-

mania's Former Ruling Party Adopts New Name," *Reuter News Service*—CIS Eastern Europe, May 28 and May 30, 1993.

132. Adrain Dascalu, "Romania's Ruling Party Meets to Change Name, Revamp Image," ibid., July 9, 1993.

133. Peter Humphrey, "Rumanian Opposition Unites Against Government," ibid., June 18, 1993.

134. "Rumanian Rulers Announce Left-Nationalist Pact," ibid., June 25, 1993.

135. Most important governmental reshuffling occurred on Aug. 28, 1993, March 6, 1994, Aug. 18, 1994, and May 5, 1995. *East Central European Law Review* 4 (Spring 1995): 21–22; (Summer 1995): 211.

136. "Rumanian Rulers Announce," Reuter News Service.

137. Arts. 6 and 59, sec. 2, of constitution of Romania, text printed in *Monitorul Oficial* (English translation in FBIS-EEU-91-246-S); see also Romanian Constitution, U.S. Department of Commerce, Central and Eastern European Legal Texts, Nov. 21, 1991.

138. Ibid., art. 16.

139. Ibid., arts. 26, 49.

140. The court was founded June 3, 1992. See *East European Constitutional Review* (Summer 1992): 5.

141. For more comments on the French model of constitutional review, see part F, chap. 4: Judicial Enforcement of the Constitutions.

142. The court also can convene at the request of the Romanian president and supreme court of justice. Romanian constitution, art. 144.

143. For example, by Resolution 2 of Jan. 5, 1995, the court upheld the Law of Empowering the Government to Issue Orders. *East European Constitutional Review* (Spring 1995): 22–23.

144. Ibid., 22.

145. See E. Stefoi-Sava, "Romania Organizing Legislative Impotence," ibid., 18–23.

146. In analyzing legislative procedures in Romania, I used information collected by the International Conference on Rules of Procedure and Parliamentary Practice, May 8–11, 1994.

147. Ibid., art. 77.

148. Ibid., art. 85.

149. Ibid., art. 89.

150. Ibid., arts. 90, 92.

151. "Psst! Iliescu Reelected President," *Washington Post,* Oct. 13, 1992, A18.

152. "Romania's Ex-Communist President Faces Tough Reelection Bid Today," *Washington Post,* Sept. 27, 1992, A44.

153. USDS Report, 1993.

154. More than 7,000 Romanian citizens, including members of human rights groups and civic organizations, monitored the elections. International Human Rights Law Group, *Most-Favored-Nation (MFN) Trade Status For Romania: The Current Hu-*

man Rights Situation, Aug. 1993, 2. Available from the International Human Rights Law Group. Hereinafter Law Group Report.

155. Ibid., 2. Report on the U.S. Helsinki Commission Delegation to Romania, Macedonia, Serbia, and Austria, Apr. 1993, 2. Available from the U.S. CSCE. Hereinafter Helsinki Commission Report. See also State Department Report, 1.

156. USDS Report, 1993.

157. Romanian constitution, art. 30 (1)–(2).

158. Ibid., art. 30(7).

159. See USDS Report, 1993.

160. Ibid.

161. Ibid.

162. Law Group Report, 3.

163. Romanian constitution, art. 36. "Meetings, demonstrations, parades, or any other form of assembly are free and may be organized and held only in a peaceful manner, without any kind of weapons." Furthermore, the law on public assembly provides for the right of Romanians to assemble peacefully as long as meetings do not "interfere with other economic and social activities[,] . . . [take place] near locations such as hospitals, airports, or military installations [,] . . . espouse Communist, racist, or Fascist ideologies or commit actions contrary to public order or national security." USDS Report, 1993. Romanians also can create associations and political parties and then secure legal status for these groups by proving a membership of no less than 251 people. Ibid.

164. Ibid., 7.

165. The most active groups are the League for the Defense of Human Rights (LADO), the Pro-Democracy Association, local groups of the Helsinki Watch and the Helsinki Committee, the Independent Romanian Society for Human Rights, and the Association of Former Political Prisoners.

166. Art. 20(1) provides that "constitutional provisions concerning the rights and liberties of citizens shall be interpreted and applied in conformity with the Universal Declaration of Human Rights and the pacts and the other treaties Romania is a party to." Art. 20(2) states that "international regulations shall have priority over internal laws in case of any inconsistencies between the pacts and treaties, agreements and fundamental human rights Romania is a party to, and the internal laws." Romanian constitution.

167. Also, the issue of granting minorities the right to study in their native languages resulted in several interventions by the Congress of the Democratic Alliance of Hungarians in Romania. *East European Constitutional Review* (Summer 1995): 22.

168. Adrain Dascalu, "Romania's Ethnic Hungarians Complain to European Council," Reuter News Service—CIS and Eastern Europe, Sept. 2, 1993.

169. "France: Council of Europe Body Critical of Romania Rights," Reuter News Service—Western Europe, Sept. 28, 1993. Available on LEXIS/NEXIS, Source: Reuter Textline.

170. "France: Romania Admitted to Council of Europe," Reuter News Service—Western Europe, Oct. 4, 1993. Available on LEXIS/NEXIS, Source: Reuter Textline.

On April 11, 1995, the amendment to the Romanian penal code was passed by the senate. According to the amendment, homosexuality is no longer a crime in Romania. *East European Constitutional Review* 4 (Summer 1995): 23. Still, homosexuals may be punished by imprisonment of one to five years if acts are carried out in public or if they cause scandal. "Amnesty Urges Romania to End Human Rights Violations," *Agence France Presse,* May 22, 1995.

171. Romanian Constitution, art. 25(1)–(2).

172. USDS Report, 1993.

173. Ibid.

174. Ibid.

175. Ibid.

176. Ibid.

177. Ibid.

178. Law Group Report, 12.

179. *East European Constitutional Review* 4 (Summer 1995): 23.

180. Helsinki Commission Report.

181. USDS Report, 1993.

182. Ibid. According to *Expres,* a weekly independent magazine, more than one hundred Gypsy homes have been set on fire or vandalized over the past three years. See Adrain Dascalu, "Romanian Gypsies Fall Victim to Race Attacks," Oct. 25, 1993. Available on LEXIS/NEXIS, Source: Reuter Textline.

183. See "Romania: Romanians Vent Old Hatreds Against Gypsies," *Independent,* Oct. 19, 1993. Available on LEXIS/NEXIS, Source: Reuter Textline.

184. Law Group Report, 12.

185. "Romania: U.S. Rights Group Urges MFN for Romania," Reuter News Service—CIS and Eastern Europe, Aug. 13, 1993. Available on LEXIS/NEXIS, Source: Reuter Textline.

186. "USA: Congress Approves Romania Trade Ties," Reuter News Service—United States, Oct. 22, 1993. Available on LEXIS/NEXIS, Source: Reuter Textline.

187. *Agence France Presse,* "Amnesty Urges Romania."

188. Kathleen Imholz, "Albania: Forgotten Country, Analysis and Opinion," *Eastern Europe Reporter,* Aug. 31, 1992, 732.

189. E. Biberaj, "Albania, The Last Domino," in Ivo Banac ed., *Eastern Europe in Revolution* (1992), 189.

190. Ibid.

191. Carol J. Williams, "Albania—A Step to Democracy," *Los Angeles Times,* Mar. 26, 1991, 6.

192. Ibid. USDS Report, 1995.

193. Stephen Holmes, "Albania's Communists Hold Power, Leaders Humbled—Forecast," *Reuters,* April 1, 1991.

194. "Albania," *East European Report* 1, no. 14 (American Banker-Bond Buyer) (April 15, 1991): 2.
195. Ibid.
196. Draft constitution of Albania, March 1991, art. 78.
197. Stephen Holmes, "Albania Dumps Title 'Socialist' in Draft Constitution," *Reuters,* April 10, 1991.
198. Januse Bugajski, "A Pivotal Time in Albania," *Christian Science Monitor,* April 15, 1992, 19.
199. Barrett, "Albania: Alia Resigns," *Reuter Textline, The Age* (Melbourne), April 4, 1992.
200. David B. Ottaway, "Europe's Backwater Turns Turbulent; Albania Fears Missteps as It Strides into Modern Democratic Age," *Washington Post,* July 23, 1993, A25.
201. Ibid.
202. "Albania: Fatos Nano Hits Out at Democratic Party After Assembly Lifts His Immunity," BBC, World Broadcasts, July 31, 1993.
203. Benet Koleka, "Albania: Albanian Opposition, Citing Arrests, Warns of Dictatorship," Reuter News Service—CIS and Eastern Europe, Aug. 25, 1993.
204. Ibid.
205. "Constitution Watch: Albania," *East European Constitutional Review* (Summer 1992): 2.
206. Ibid. (Spring 1992): 4.
207. The March 1991 draft (analyzed below) will be referred to as the Albanian draft.
208. Analysis of the draft constitution of Albania, ABA CEELI, Sept. 30, 1991. Hereinafter CEELI Albanian Analysis.
209. For more detailed explanation of the concept of *état de droit,* see pt. B, chap. IV: The Description of the State.
210. Albanian draft, art. 2.
211. Ibid., arts. 67, 68.
212. CEELI Albanian Analysis, 3.
213. Albanian draft, art. 19.
214. *East European Constitutional Review,* 3.
215. Ibid., Spring 1993, 2.
216. Law on the Major Constitutional Provisions of April 29, 1991, BBC, World Broadcasts, May 4, 1991, arts. 15, 33. Court's Ruling of Jan. 25, 1995, *East European Constitutional Review* 4 (Spring 1995): 17.
217. BBC, World Broadcasts, May 4, 1991, art. 28(6)–(7). *East European Constitutional Review* 4 (Summer 1995): 25.
218. Ibid., art. 16(10).
219. Ibid., art. 27(9).
220. Ibid., art. 10.
221. Ibid., art. 11.
222. The concrete or "incidenter" review is initiated by introducing constitutional

issues before ordinary tribunals in connection with regular adversary proceedings. The abstract or "principaliter" review is triggered by the action of special government authorities submitting to the court a law or abstract constitutional question. See Mauro Cappelletti and William Cohen, "Two Methods of Reviewing a Constitutional Question: 'Incidenter' and 'Principaliter,' " *Comparative Constitutional Law: Cases and Materials* (1979), 84–90.

223. Albanian draft, arts. 24, 25.

224. In Decision No. 8, the Law on Weapons, May 25, 1992, the constitutional court itself rewrote the section of art. 14.4 of the challenged law that was widely commented on as an encroachment legislative body's into the competence. See John Paul Jones, "The Tribunal in Tirana," *East European Constitutional Review* 2 (Spring 1993): 51–52.

225. L. Semini, "Albania: Berisha Seeks New Albanian Constitution," Reuter Textline, Reuter News Service—CIS and Eastern Europe, Nov. 10, 1994. USDS Report, 1995.

226. *East European Constitutional Review* 4 (Spring 1995): 3.

227. Ibid., 2.

228. Ibid., Spring 1993, 2. The Charter of Rights was published in English translation in Tirana, Mar. 31, 1993, as "Law in a Supplement to the Law No. 7491, Dated 29.04 1991 'On Principal Constitutional Provisions.' "

229. As Albania expressed interest in becoming a member of the CSCE a delegation from the organization was sent there in Aug. 1990 and Mar. 1991 to observe the country's first multiparty election. During the visit, the delegation noted the many changes that had taken place, including the extent to which Albanian society had opened up, the presence of opposition political parties, and the people's desire to seek out and talk to foreigners. The delegation also met with Arben Puto, chair of the Forum for the Defense of Human Rights and Fundamental Freedoms, who agreed that while many changes had occurred, a great deal more was still to be done. He informed the delegation that, particularly, about three hundred political prisoners remained in detention. After the delegation intervened, 270 of them were released. Albania was granted observer status to the CSCE as a result of the visit. "Report on the Helsinki Commission Delegation Visit to Hungary, Yugoslavia and Albania," prepared by the CSCE staff, Mar. 22–28, 1991, 34–37. Hereinafter Helsinki Report. Available from CSCE.

230. Albanian draft.

231. USDS Report, 1993.

232. Ibid. The international observers noted that opposition parties were freely able to use radio, television, and newspapers to conduct their campaigns. Some irregularities were found in ethnic Greek areas, where ethnic Greek candidates to parliament were harassed. To avoid similar future incidents, an independent group set up the Society for Free Elections and Democratic Culture "to monitor elections and to assist with the country's difficult transition to democracy."

233. The detailed regulations on political manifestations are provided by July 1990 Decree No. 7408, "On Meetings, Rallies, and Demonstrations of Citizens in Public

Places." The decree does not differentiate between meetings, rallies, or demonstrations; however, meetings in which participants move from agreed locations to others are considered "illegal" and therefore not permitted. See Amnesty International report, "Albania: Human Rights Abuses by Police," Oct. 1993, 4, 5. Hereinafter Amnesty Report.

234. The ban was challenged before the constitutional court, which affirmed the law on the basis that Albania under the amended constitution is a free market system, and, therefore, only parties that agree with this system have the right to exist. State Department Report.

235. Amnesty Report, 2.

236. Ibid. Also, USDS Report, 1995.

237. Much controversy is apparent over exactly how many ethnic Greeks are located in Albania. The CSCE noted that according to Albanian figures the total number in 1990 was between 59,000 (the official figure) and 400,000. "Report on the U.S. Helsinki Commission Delegation Visit to Hungary, Yugoslavia, and Albania," 27. The U.S. State Department reported that ethnic Greek leaders claim that 70,000 to 80,000 ethnic Greeks reside in Albania. State Department Report.

238. Country: Albania, KCWD/Kaleidoscope, 1993 ABC-Clio, Oct. 20, 1993.

239. USDS Report, 1993.

240. Ibid.

241. Ibid.

242. "Albania: Albanian Political Parties and Trade Unions Denounce Expulsions From Greece," *Reuter Textline,* BBC Monitoring Service: Eastern Europe, July 5, 1993.

243. See Stephen Weeks, "Greece Recalls Ambassador to Albania After Border Incidents," Reuter News Service—Western Europe, Oct. 26, 1993.

244. Albanian Draft, art. 7.

245. USDS Report, 1993.

246. Because religion was forbidden from 1967 to 1990, the natural result is a shortage of clergy members. Therefore, Albanian authorities have allowed foreign clergy to visit the country and "revive religious institutions and train Albanian clergy." In 1992 the spiritual head of the Christian Orthodox church appointed a Greek citizen, Archbishop Anastasios, as head of the church in Albania. See Amnesty Report, 8. See also State Department Report. Ethnic tensions based on religious background further increased in June 1993 when the Albanian government arrested and expelled an Orthodox priest and Greek citizen, Archimandrite Chrysostomos, on charges that he had used his position to advocate separatism to the Greek minority. In response, Greek authorities expelled a large group of Albanians who had been working illegally in Greece. See Amnesty Report, 8.

247. "Albanian Premier, President Assure CSCE Commissioner of Respect for Human Rights," *Reuter Textline,* BBC Monitoring Service: Eastern Europe, July 31, 1993.

248. USDS Report, 1995.

249. Statement of Steny H. Hoyer at hearing on democratic developments in Albania, May 22, 1991, 25.

250. Ernest Skalski, "After the Round Table, Poland Turns to the Polls," *New Leader,* Apr. 3–17, 1989, 6.
251. Ibid., 7.
252. Jackson Dieh, "Polish Side Agrees on Freely Elected Senate," *Washington Post,* March 10, 1989, 1.
253. "Electoral Law," April 11, 1989, art. 41, *Rzeczypospolita* (Republic), April 11, 1989, 2.
254. Skalski, "After the Round Table," 7.
255. "Constitutional Amendments," art. 27, *Rzeczypospolita,* April 11, 1989, 1.
256. Ibid., art. 32a.
257. Ibid., art. 27/5.
258. Ibid., art. 30/2.
259. "Solidarity's Stunning Win," *Newsweek,* June 19, 1989, 42.
260. See *Eastern Europe in Revolution,* 17–19.
261. See Jan Gross, "Poland: From Civil Society to Political Nation," in ibid., 60.
262. Ibid., 27–30.
263. Ibid., 52.
264. Ibid.
265. Interview with Andrzej Mania, professor and associate dean of the Faculty of Law, Jagiellonian University, Cracow, an expert on Polish constitutional law (July 13, 1992). Hereinafter, interview with Andrzej Mania.
266. Wiktor Osiatynski, "Skazani na oryginalnosc" (Doomed to Originality), *Gazeta Wyborcza* (Electoral Gazette), Aug. 29, 1992, 8.
267. USDS Report, 1995. As Bronisław Geremek, a Polish historian and early leader of Solidarity, stated: Poland with her 250 political parties could qualify for the *Guinness Book of World Records.* "Parliamentarism in Central Europe," *East European Constitutional Review* 4 (Summer 1995): 46.
268. Osiatyński, "Skazani na oryginalnosc."
269. Mary Battiata, "Polish Parliament Opens with No Prime Minister," *Washington Post,* Nov. 26, 1991, A14.
270. USDS Report, 1991.
271. Jeffrey Sachs, "Building a Market Economy in Poland," *Scientific American,* March 1992, 36.
272. Figures according to Sachs, ibid., 37; also USDS Report, 1991.
273. Released in April 1992, DRT International's survey on middle-market investment in Central and Eastern Europe shows that while a clear majority of Western companies see growth opportunities in this region—as well as growing customer demand and the possibility to reduce costs and become less dependent on their home economies—most of them would admit that major problems have to be considered in going into East-Central Europe. Among the difficulties most often encountered is the uncertain political and economic environment that creates high risk for investment. Other difficulties include cultural, social, and linguistic problems, administrative formalities, lack of

finance for investment, currency restrictions, poorly working banking system, and the general lack of information and reliable contacts.

274. The Polish Central Statistical Office reports that there were 7,685 joint ventures in the second quarter of 1992, compared with 2,176 for the same period in 1991. By country of origin, in 1992 firms from Germany had the largest number of joint ventures (37 percent), followed by companies from Sweden (8 percent), France (5.1 percent), and the United Kingdom (4.8 percent). Within 1992, capital invested by joint ventures doubled from $182 million in 1990 to $402 in 1991. "Government Reports Sizable Rise in Ventures with Foreign Investors," *East European Report* (BNA), no. 19, 739, 748, Sept. 14, 1992.

275. Between Dec. 1989 and June 1991 the number of private industrial corporations grew by about 25,000. Sachs, "Building a Market Economy," 39.

276. USDS Report, 1991.

277. Data after *c:\data\contract\taskliste Polish G.U.S.* and "Advanced Reforming Countries Might Reach End of Recession," *Vienna Institute for Comparative Economic Studies,* June 1992, quoting "Polska Szansa tej Jesieni" (Polish Chance This Fall), *Gazeta Wyborzcza,* Sept. 10, 1992.

278. Labor Minister Jacek Kuron stated that as of July 25, 1992, a total thirty-eight brief strikes and forty-two protests occurred in three different regions, with more than 50,000 workers taking part. "Government Promises to Prepare Draft Stabilization Agreement," *East European Report* (BNA), Aug. 3, 1992, 627.

279. Ibid., 594.

280. Some Polish constitutional experts believe that the Polish Seym lost momentum after completion of the roundtable negotiations. "The biggest mistake the government has committed since the changes began—says Mr. Szczepanek, of the office of Kaizmierz Barczyk, Representative to the Seym—was to neglect putting forth a constitutional draft quickly; trying it out to see if it succeeds and if it does not then discarding it." Interview with Representative Kazimierz Barczyk and his associates, Mr. Szczepanek and Mr. Gadowski, June 29, 1992.

281. The date when the commissions were appointed is not clear. Andrzej Rapaczyński mentions early 1990, while other commentators offer Dec. 1989. See Andrei Rapaczyński, "Constitutional Politics in Poland: A Report on the Constitutional Committee of the Polish Parliament," *University of Chicago Law Review* 58 (1991): 595, 601; see also "Constitution Watch," *East European Constitutional Review* (Spring 1992): 2.

282. *East European Constitutional Review.*

283. Ibid.

284. Rapaczyński, "Constitutional Politics," 626–30 (analyzing the draft in detail); see also ABA CEELI, comments on the draft Polish constitution, July 8, 1991.

285. See *Projekt Konstytucji Rzeczypospolitej Polskiej* (Draft Constitution of the Polish Republic), Apr. 1991; *Projekt Konstytucji Rzeczypospolitej Polskiej,* Oct. 24, 1991; *Prace Komisji Konstytucyjnej Senatu* (Works of the Senate's Constitutional Commission), vol. 3, 1991; *Prace Komisji Konstytucyjnej Senatu, Projekt Konstytucji,* vol. 5, 1991.

286. The Polish constitutional drafts prepared from 1989 until 1991 were published by Wydawnictwo Sejmowe (Seym Publisher) as *Projekty Kostytucyjne 1989–1991* (Constitutional Drafts, 1989–1991) (1992).

287. Minutes of the legislative commission of the Polish Sejm, *Biuletyn,* Feb. 5, Feb. 11, and Feb. 14, 1992; see also constitutional bill on "Procedure of the Adoption of a New Constitution," submitted by the Seym's Marshal Wiesław Chrzanowski, March 10, 1992.

288. "Interim Constitution Approved in Poland," *East European Constitutional Review* (Spring 1992): 12–13; records of the constitutional debates taken by me.

289. The full title of the act is "The Constitutional Statute on Appointing and Dismissing the Government and Other Changes Regarding the Highest State Organs." See the draft of the act submitted to Chrzanowski by President Wałęsa, Mar. 12, 1991.

290. See "Jaka Konstytucja" (What Constitution), *Gazeta Wyborcza,* June 29, 1992; Wiktor Osiatyński, "Skazani na oryginalnosc"; "Special Reports: Interim Constitution Approved in Poland," *East European Constitutional Review* (Spring 1992): 12–13.

291. The text of the Small Constitution has been published as "Ustawa Konstytucyjna of August 1, 1992, on Mutual Relations Between the Legislative and Executive Power and on Local Government," *Ekonomia i Prawo* (Economics and Law), Aug. 7, 1992, no. 185, VIII.

292. See Lech Mazewski, "Wzmocnienie Państwa" (Reinforcing the State), *Rzeczypospolita,* Sept. 18, 1992.

293. "Jaka Konstytucja," 11.

294. *East European Constitutional Review* (Summer 1994): 2.

295. Ibid., 4 (Spring 1995): 33.

296. Text of Ukrainian Law on the Status of Crimea, BBC Monitoring Service, CIS, April 8, 1995.

297. "Interim Constitution Approved in Poland," 13.

298. "Mała Konstytucja Uchwalona" (The Small Constitution Adopted), *Gazeta Krakowska* (Cracow's Gazette), Oct. 17–18, 1992, 1.

299. "Regulamin Niekonstytucyjny" (Unconstitutional Procedure), *Gazeta Wyborcza,* Oct. 19, 1992, 2.

300. Włodzimierz Bieroń, "Regulamin Sejmu przed Trybunałem" (The Seym's Procedure Before the Tribunal), *Rzeczypospolita,* Oct. 20, 1992.

301. See "The Constitutional Act of 17th October 1992 on Mutual Relations Between the Legislative and Executive Institutions of the Republic of Poland and on Local Self-Government with Constitutional Provisions Continued in Force," *Journal of Laws of the Republic of Poland of 23rd November 1992,* no. 84, item 426 (1992).

302. *East European Constitutional Review* (Spring 1993): 10.

303. For further comments on the Polish bill of rights, see A. Rzepliński, "The Polish Bill of Rights and Freedoms: A Case Study of Constitution-making in Poland," ibid., 4 (Summer 1995): 26–29.

304. John Pomfret, "Poland's Victorious Ex-Communists Take Steps Toward Return

to Power," *Washington Post,* Sept. 21, 1993, A15; see also "Former Communists Take Strong Lead in Polish Election," *Washington Post,* Sept. 20, 1993, A12.

305. W. Osiatyński, "A Letter from Poland," *East European Constitutional Review* 4 (Spring 1995): 42.

306. Christine Spolar, "Wałesa Gets His Say on Key Posts in New Cabinet," *Washington Post,* March 4, 1995, A20.

307. *East European Constitutional Review* 4 (Spring 1995): 20.

308. Ibid.

309. Uniform Draft of the Constitution of the Republic of Poland, Warsaw, Jan. 1995. For further comments, see ibid.

310. J. O. Jackson, "Drop Marx, Go for the Sound Bite," *Time,* Dec. 4, 1995, 42; A. Nagorski, "The Return of the Reds," *Newsweek,* Dec. 4, 1995, 47; "Aleksander Kwaśniewski Sworn in as President," Newsletter of the Embassy of the Republic of Poland, Jan. 1, 1996, 1.

311. Rett R. Ludwikowski, "Judicial Review in the Socialist Legal System: Current Developments," *International and Comparative Law Quarterly,* vol. 37 (1988), 89–108; Mark F. Brzeziński, "The Emergence of Judicial Review in Eastern Europe: The Case of Poland," *American Journal of Comparative Law* 46 (Spring 1993) 153–200.

312. See Ludwikowski, "Judicial Review in the Socialist Legal System," 100–108.

313. USDS Report, 1993, 866–67.

314. "Poland Joins Human Rights Convention," *Polish News Bulletin,* Apr. 29, 1993.

315. USDS Report, 1995.

316. Minorities constitute only 2.6 percent of the population of Poland, which is approximately 38.3 million. Polish is the country's only official language and its more sizable minorities are Ukrainians, 350,000; a German-speaking minority residing along the Baltic coast and in Silesia, 350,000; Belorussians, 200,000; Czechs and Slovaks, 30,000; Lithuanians, 25,000; Gypsies 25,000; and Jews 15,000. Approximately 95 percent of Poles are Roman Catholic, and until more recently the Eastern Orthodox and Protestant communities had only a small presence in the country. *Poland, Your Business Partner* (1992), 1/1; *Poland: A Profile* (1993) 8–9.

317. USDS Report, 1993.

318. USDS Report, 1995.

319. Ibid.

320. Ibid., 866. In Aug. 1992 (during the period when the materials for this article were collected) the constitutional court was asked to review this directive; the commissioner for human rights protection alleged that the directive "violates the freedom and anonymity of religious beliefs."

321. Ibid., 863.

322. Constitutional Act of Poland, Oct. 17, 1992, arts. 83, 84(1).

323. USDS Report, 1993.

324. The Constitutional Act of Poland, art. 83.

325. USDS Report, 1993.

326. Paragraph 270 of the criminal code; Jacek Kalabiński, "U.S. Organizations Against Censorship in Poland," *Polish News Bulletin,* Aug. 31, 1993.
327. USDS Report, 1995.
328. Ibid.
329. Ibid.
330. See Kalabiński, "U.S. Organizations Against Censorship," 21.
331. USDS Report, 1995.
332. The penalty for violating this provision of the law is up to 50 percent of a broadcaster's annual fee for the transmission frequency, plus the prospect of having the license withdrawn or experiencing difficulty in renewing the license when it expires.
333. USDS Report, 1993.
334. Ibid.
335. Katarina Mathernova, "Czecho? Slovakia: Constitutional Disappointments," *American University Journal of International Law and Policy* (1992): 471.
336. Judt, "Metamorphosis," 96–99.
337. Timothy Garton Ash, *The Magic Lantern* (1990), 78–131.
338. Ibid., 96.
339. 1991 IBC International Country Risk Guide, Services of Mead Data Central, Inc., Dec. 1991. Hereinafter International Risk Guide.
340. Ibid.
341. William R. Doerner, "Our Time Has Come," *Time,* Dec. 4, 1989, 20–24.
342. Judt, "Metamorphosis," 100.
343. Michael Wise, "Once-Dissident Havel Inaugurated as Czechoslovak President," *Reuters,* Dec. 29, 1989. Available in LEXIS, Nexis Library, Reuter File.
344. Judt, "Metamorphosis," 105.
345. Ibid., 106.
346. Civic Forum, "Ally Win Czechoslovak Elections," *Facts on File,* June 15, 1990, 444.
347. Bergman, "Civic Forum Faces New Hurdles in Prague," *Christian Science Monitor,* June 13, 1990, 6. In the lower chamber the parties Civic Forum and Public Against Violence won 87 of the 150 seats, and in the House of the Nations the two parties won 83 of the total 150 seats. The Communist Party of Czechoslovakia, with 13.6 percent of the vote, won 47 of the 300 seats in parliament, while the Christian Democratic Union with 11.6 percent of the vote won 40 seats, the Moravian autonomists won 16, Slovak separatists 16, and the Hungarian minority, 13.
348. Havel was reelected as president on July 5. Peter S. Green, "Havel to Ask Former Communist to Form Czechoslovak Government," UPI, June 13, 1990. Available in LEXIS, Nexis Library, UPI File.
349. Steve Schoenhoff and Mark Hanna, "After the Revolution, Czechoslovakia's Quest for Recovery," *New Dimensions,* Mar. 1991, 60–65.
350. The decontrol of prices was set to happen in two stages, the first on July 1, 1990, the second in Jan. 1991. Judt, "Metamorphosis," 103.
351. Mathernova, "Czecho? Slovakia," 481. Also, USDS Report, 1995.

352. Bergman, "Civic Forum Faces New Hurdles in Prague," *Christian Science Monitor,* June 13, 1990, 6. Available in LEXIS, Nexis Library, CSM File.
353. International Risk Guide.
354. Texts of the constitution of 1960 and the constitution law on the Czechoslovak Federation, Oct. 27, 1968, reprt. William B. Simons, *The Constitutions of the Communist World* (1984), 135–58, 582–624.
355. In contrast to the executive in Poland, the Czechoslovak president's powers were modest. He was elected by the federal assembly, could dissolve the assembly only if it would not agree on the budget, and could appoint a government that could be easily voted out by the assembly. He could not call for a referendum, rule by decree, or veto acts of the assembly. Arts. 60–65, Constitutional Law on the Czechoslovak Federation, in Simons, *Constitutions of the Communist World,* 603–5 (arts. 60–65). USDS Report, 1995.
356. "Constitution Watch," *East European Constitutional Review* (Spring 1992): 3; U.S. Department of State, *1991 Human Rights Report: Czech and Slovak Federal Republic,* Feb. 1992.
357. Czech Constitution Act no. 91/1991 and no. 326/1991.
358. See Simons, *Constitutions of the Communist World,* 597–98. K. Mathernova explains: "The majoritarian rule (a majority outvoting a minority) is prohibited, i.e., deputies in the two parts of the Chambers of Nations have to vote separately, when voting on bills regulating taxes, price policy, customs, technological investment, labor, wages and social policy, press, media, economic administration, establishment of federal organs of state administration, foreign economic relations, any budgetary questions and issues of citizenship. Interestingly, the prohibition of majoritarian rule does not apply to votes of no confidence to the government (the executive)." "Czecho? Slovakia," 482.
359. Ibid., 483. USDS Report, 1995.
360. Arts. 41 and 42 of the 1968 Federation Amendment, reprt. Albert P. Blaustein and Gisbert H. Flanz, eds., *Constitutions of the Countries of the World: Czechoslovakia* (1974).
361. Mathernova, "Czecho? Slovakia," 483.
362. International Risk Guide.
363. Mary Battiata, "Slovaks of Two Minds Over Separation from Big Czech Brother," *Washington Post,* Sept. 10, 1992, A22.
364. Mathernova, "Czecho? Slovakia," 488.
365. Ibid., 496–97.
366. Slovak Republic Constitution (CSFR's proposed draft), U.S. Department of Commerce, NTIS, "Central and Eastern Europe Legal Texts," Dec. 23, 1991.
367. See Janyska, "No More of That," *East European Report,* July–Aug. 1992.
368. Mary Battiata, "Czechs, Slovaks Split in Elections; Outcome Could Hasten Country's Breakup," *Washington Post,* June 7, 1992, A27.
369. Ibid. See also "New Czech, Slovak Leaders Accelerate Separation," *East European Constitutional Review,* special report (Summer 1992): 10.

370. Ibid.

371. Jan Krcmar, "Czechoslovakia Will Split After 74 Years," *Reuters,* June 20, 1992. Available in LEXIS, Nexis Library, Reuter File. "Czechoslovak Split Due January 1," *Washington Post,* Aug. 27, 1992.

372. Andrew Nagorski, "It Was Good While it Lasted," *Newsweek,* June 29, 1992, 33.

373. Stephen Endelberg, "Slovakia Deputies Block Re-election of Vaclav Havel," *New York Times,* July 4, 1992, 6.

374. "Slovak Parliament Approves Constitution," *Reuters,* Sept. 1, 1992.

375. Text in *Hospodarske Noviny,* Dec. 21, 1992, 7, 8; trans. U.S. Department of Commerce—NTIS, Central and Eastern Europe Legal Texts under "Constitution of Czech Republic of 12/92." Hereinafter Czech constitution.

376. Ibid.; also Philippa Fletcher, "Czechoslovakia: Czechs Look West But Say They Will Not Abandon Slovakia," Reuter News Service—CIS and Eastern Europe, Jan. 1, 1993.

377. Section: News, CTK National News Wire, Jan. 1, 1993.

378. "Cooperation with Czechs High Priority for Slovakia," ibid. USDS Report, 1995.

379. Vaclav Havel was elected the first president of the Czech Republic on Jan. 26, 1993, at a session of the chamber of deputies that was interrupted by a bomb threat. Havel received 109 of 200 votes. His opponent, Marie Stiborova, a candidate of the communist-led bloc, received 49 votes, and Miroslav Sladek, chairman of the Association for the Republic, received 14 votes. Six votes were invalid. BBC, World Broadcasts: Eastern Europe, Jan. 28, 1993.

380. Jan Krcmar, "Slovak Leader Talks Tough On Opposition, Hungary," Reuter News Service—CIS and Eastern Europe, Jan. 1, 1993.

381. *Country: Slovakia,* April 30, 1993.

382. "Slovak President Master Behind-the-Scenes, Russian Daily Says," *CTK National News Wire,* Feb. 19, 1993.

383. Czech constitution, art. 3. USDS Report, 1995.

384. Art. 7, sec. 2, of the Slovak constitution provides, "If a deputy is appointed member of the Government of the Slovak Republic, his mandate as a deputy does not cease while he executes the government post, but is just not being exercised." Constitution of the Slovak Republic, art. 7(2), reprt. U.S. Department of Commerce, Central and Eastern Europe legal Texts, Sept. 15, 1992. Hereinafter Slovak constitution. Art. 38, sec. 1 of the Czech constitution declares that "a member of the government has the right to participate in meetings of both chambers and their committees and commissions," but art. 70 provides only that "a member of government may not engage in activities the nature of which is in conflict with the execution of his office. Details shall be set out in a separate law." Czech constitution.

385. S. Zifcak, "The Battle Over Presidential Power in Slovakia," *East European Constitutional Review* 4 (Summer 1995): 61–65.

386. Ibid., 62.

387. V. Cepl and D. Franklin, "Senate, Anyone? The Real Reason Behind the Czech Upper House," ibid. (Spring 1993): 58–60.

388. In the examination of the legislative processes in Czech and Slovak Republics, I made extensive use of information collected in "Answers to the Questionnaire and Information Submitted to the International Conference in Pultusk, 8–11 May 1994, on Rules of Procedure and Parliamentary Practice."

389. Slovak constitution, art. 93(1)–(2).

390. Czech constitution, art. 91; Slovak constitution, art. 127.

391. Czech constitution, art. 83; Slovak constitution, art. 124.

392. The Slovak constitutional court consists of ten judges out of twenty persons proposed to him by the national council; the president appoints each judge's term is seven years. Slovak constitution, art. 134 (1)–(2). USDS Report, 1995.

393. The Czech constitutional court is composed of fifteen judges appointed by the president for ten-year terms. Czech constitution. art. 84.

394. For this reason the human rights situation in both republics will be analyzed jointly.

395. "Human Rights and Democratization in Slovakia," Report Prepared by the CSCE, Washington, D.C., Sept. 1993. Hereinafter CSCE Report: Slovakia.

396. Slovak constitution, art. 12 (1)–(2); Czech charter of fundamental rights and freedoms, arts. 1, 3(1).

397. Slovak constitution, art. 6 (1)–(2).

398. Ibid., arts. 33, 34(3).

399. CSCE Report: Slovakia, 9.

400. See Henry Kamm, "End of Communism Worsens Anti-Gypsy Racism," *New York Times,* Nov. 17, 1993, A12.

401. CSCE Report: Slovakia, 13.

402. Ibid.

403. Kamm, "End of Communism Worsens."

404. "Czechoslovakia: Czech Parliament Passes Law on Citizenship," Reuter News Service—CIS and Eastern Europe, Dec. 29, 1992. Available on LEXIS/NEXIS, Source: Reuter Textline. USDS Report, 1995.

405. USDS Report, 1995.

406. Ibid. CSCE Report: Slovakia, 11. Approximately 25 percent of the total population of Slovaks consists of ethnic or religious minorities: Poles, Germans, Ukrainians, Ruthenians, and Gypsies. The Slovaks are predominantly Catholic, but approximately 400,000 Lutherans and 3,000 Jews live there. In 1994 the estimated population of Hungarians, many of them Roma, was 570,000.

407. State Department Report.

408. Slovak constitution, art. 34.

409. USDS Report, 1995.

410. "Czechoslovak Parliament Adopts Sweeping Purge Law," *Agence France Presse,* Oct. 4, 1991.

411. Leszek Mazan, "Czechoslovakia: Communist by a Different Color," *Warsaw Voice,* Apr. 12, 1992.
412. "Lustration in the Czech and Slovak Republics," *Research Bulletin from RFE/RL Institute,* Aug. 3, 1993.
413. The Czech minister of justice, Leon Richter, stated that the law contravenes both the charter of fundamental rights and freedoms and a Czech's international obligations, basically because the law does not allow for case-by-case screening of individuals. See "Czech Justice Minister Criticizes Screening Law," *CTK National News Wire,* Oct. 15, 1991. The Helsinki Commission also claims that the purge law contradicts human rights accords. "Lustration in the Czech and Slovak Republics," 5.
414. "Czechoslovak Parliament Adopts Sweeping Purge Law."
415. "Lustration in the Czech and Slovak Republics."
416. Ibid.
417. Ibid.
418. Ibid.
419. Czech constitution, art. 5; Slovak constitution, art. 1.
420. USDS Report, 1995.
421. USDS Report, 1993.
422. USDS Report, 1995.
423. Ibid. A nine-member council is chartered for a term of six years.
424. Ibid.
425. Ibid.
426. Rett R. Ludwikowski, "Searching for a New Constitutional Model for East-Central Europe," *Syracuse Journal of International Law and Commerce* 17 (1991).
427. A uniform structure of constitutional act XX of 1949 and its amendments was published in *Magyar Kozlony* (Hungarian Official Gazette), Aug. 24, 1990. The English version is quoted from the official translation of the constitutional text, which was sent to me by the Hungarian Embassy in Washington, D.C.
428. Preamble to the Hungarian constitution of 1949 as amended.
429. Former art. 5.
430. Former art. 6.
431. Former art. 54(2).
432. Former art. 6(2).
433. Current art. 9(1).
434. Current arts. 9(2), 13 and 14.
435. Amended art. 19(4).
436. Current art. 19(5).
437. Art. 29B(1).
438. Art. 33(3).
439. Art. 29(2). On the other hand, Article 40 B(3) states that "the command of the armed force is the exclusive province of Parliament, of the President of the Republic, the National Defense Council, the Government and the competent minister." The confusing wording of art. 29(2) and 40B(3) triggered the ruling of the Constitutional

Court (No. 481 1991 at September 26) explaining the division of powers with regards to control of armed forces of Hungary.

440. H. Schwartz, "The New East European Constitutional Courts," *Michigan Journal of International Law* 13 (Summer 1992): 754; also P. Paczolay, counsel to the Hungarian constitutional court president, address at American University, Washington, D.C., April 17, 1992.

441. *East European Constitutional Review* (Winter 1995): 13.

442. Through practice, various mechanisms were worked out to neutralize the political background and even to dissociate judicial officials from the interests of their home countries. The best example is the procedure of the European court of justice, which requires the complete independence of its members. To protect the judges against national pressure, the court always issues its decision without any separate concurring or dissenting judgments. The system works perfectly. See T. C. Hartley, *The Foundations of European Community Law* (1988), 50–51.

443. L. Bruszt and D. Stark, "Remaking the Political Field in Hungary: From the Politics of Confrontation to the Politics of Competition," in *Eastern Europe in Revolution,* 1992, 51.

444. KCWD/Kaleidoscope, ABC-Clio, Country: Hungary, Aug. 21, 1992.

445. Hungarian Constitution of 1949, chap. 2, no. 24(3). Translation published in *Magyaw Kozlony* (Official Gazette), Aug. 24, 1990.

446. Racz, "Hungarian Parliament's Rise and Challenges," Radio Free Europe Research Report (Feb. 14, 1992), 22–23.

447. "Politicians Lose in Popularity, Polls Show," *MTI Econows,* MTI Hungarian News Agency, Dec. 17, 1992.

448. Ibid. In third place was President Arpad Goncz, who was in first place in several former polls and had lost only 1 percent of the vote since Sept. 1992. In fourth place was HSP Chairman Gyula Horn, and in fifth place was Ivan Peto, who is chairman of the strongest opposition party, AFD. Prime Minister and HDF Chairman Antall was in fourteenth place, having lost 12 percent since Sept. 1992.

449. First of all, there has been a split within ISP with one section, the historical, supporting the governing coalition, and the other section, led by Jozsef Torygan, which does not support the coalition. Moreover, ISP has refused to renounce one of its main causes—the complete and immediate return of land nationalized during the communist era to its former owners. "Coalition Smallholders Hold Rallies in Support of Government" (BBC radio broadcast, Apr. 29, 1992) available in LEXIS, Interlaw Library, BBCSWB File. See also International Country Risk Guide: Hungary (Jan. 1992).

450. The AFD, for instance, supported HDF's proposal to change the constitutional requirements of two-thirds of parliament being needed to pass some important measures. Arpad Goncz, *IBC USA Licensing, Inc., Political Risk Services,* May 1, 1992. Available in LEXIS, World Library, RPTIBC File.

451. *Eastern Europe in Revolution,* 19. See also Gabor Horvath, "Hungary: Parliament Adopts New Government's Program," *Inter Press Service,* May 24, 1990. Available in LEXIS, Interlaw Library, Impres File.

452. Barnabas Racz, "The Hungarian Parliament's Rise and Challenges," *Radio Free Europe/Radio Liberty Research Report,* no. 7 (Feb. 14, 1992): 22, 23. The constitutional court in Hungary has emerged as a powerful and influential force. The court has overturned governmental proposals and has promoted individuals' rights that were at one time undermined by the state. The court president, Laszlo Solyon, said that its primary goal "is to ensure the law is administered unequivocally, and if that means the search for justice has to take a back seat, then so be it." Michael Shields, "Hungary's Top Court Acts As Watchdog for New Democracy," *Reuter Textline,* June 13, 1993. The constitutional court has also intervened in the media debate, abolished the death penalty as cruel and arbitrary, designated a passive role to the president in exercising state power, and barred the state from compelling taxpayers to report their assets. Of the ten so far elected justices on the constitutional court, three of them were former Communist Party members; leading many to question whether the court is truly free from political influence. Ibid.

453. "Antall versus Goncz: Crisis Looms in Hungary," *Financial Times,* June 12, 1992. In the beginning of 1993 the media dispute culminated when the heads of state television and radio tendered their resignations because of excessive governmental interference. See Nicholas Denton, "Heads of Hungary Radio and Television Resign," *Financial Times,* Jan. 7, 1993; see also Ken Kasriel, "Hungary's Media Curbs Press Freedom," *Christian Science Monitor,* Jan. 11, 1993, 5; and "Media Law Leaders of Opposition Parties Call on President," MTI Hungarian News Agency, Jan. 11, 1993.

454. "Parliament—President Relieves Six Ministers. Prime Minister Nominates Successors," MTI Hungarian News Agency, Feb. 15, 1993.

455. Emil Varadi, "Hungarian Cabinet Reshuffled," *Reuter European Business Report,* Feb. 23, 1993.

456. "Antall Plans No More Reshuffle Until Elections of 1994," MTI Hungarian News Agency, Feb. 21, 1993.

457. Ibid.

458. Hungary—Country Marketing Plan FY '92, Market Reports (National Trade Data Bank), Jan. 1992. Available in LEXIS, World Library, MKTRPT File.

459. "Mid-Year Unemployment Figures Published," Daily Report: Eastern Europe, FBIS, Aug. 6, 1992, 23.

460. "Statistical Data on Economy Analyses," Daily Report: Eastern Europe, FBIS, Aug. 20, 1992, 15.

461. DRT International, "Middle-Market Investment in Central and Eastern Europe," preliminary results of report prepared by Jacques Manardo, chairman of the European board of DRT International, Apr. 1992, 3.

462. Hungary—Country Marketing Plan, 40.

463. Ibid., 37.

464. "Hungary's Tough Times Reviving Political Jokes," *Chicago Tribune,* May 7, 1992, 31C.

465. *East European Constitutional Review* (Spring 1994): 10.
466. According to the amendment, the act on ombudsman was modified (act 75, 1994). Ibid., 4 (Winter 1995): 14.
467. Ibid., 4 (Summer 1995): 10–11.
468. Ibid., 121.
469. "Hungary Ratifies Human Rights Convention," MTI Hungarian News Agency, Nov. 5, 1992. Available on LEXIS, World Library, MTI File.
470. The European Charter of Regional and Minority Languages has been drafted to save "dying regional and minority languages"; it requires its signatories to "abolish groundless restrictions on the usage of regional and minority languages" and to promote the usage of native languages. The Russian-Hungarian Declaration on Minority Rights protects the rights of national, ethnic, religious, and language minorities, and it requires that the two countries have the same goal of guaranteeing rights of minorities and preventing discrimination. "Hungarian-Russian Declaration on Minority Rights," MTI Hungarian News Agency, Nov. 12, 1992. Available on LEXIS, World Library, MTI File.
471. Hungarian constitution, art. 70A(1).
472. Hungarian constitution, art. 69 (1)–(4).
473. "Parliament Passes Minority Law," MTI Hungarian News Agency, July 7, 1993. Available on LEXIS, World Library, MTI File.
474. Ibid.
475. "Local Government and Parliamentary Representation for Minorities in Hungary," MTI Hungarian News Agency, Aug. 24, 1993. Available on LEXIS, World Library, MTI File.
476. USDS Report, 1995.
477. The existing human rights groups in Hungary are the Hungarian Helsinki Commission, the Wallenberg Association for Minority Rights, the Hungarian Human Rights League, the Martin Luther King Organization (formed by foreign students), and a parliamentary commission of twenty-five members for Human, Minority, and Religious Rights. *State Department Report.*
478. Approximately 400,000 to 600,000 Gypsies and 80,000 Jews live in Hungary. USDS Report, 1993.
479. Ibid.; see also Helsinki Report, 2, 3, and 5.
480. State Department Report.
481. Helsinki Report, 1; State Department Report.
482. USDS Report, 1993.
483. Hungarian constitution, arts. 706(1), 62(1).
484. USDS Report, 1993.
485. Hungarian constitution, art. 53(1).
486. Ibid., art. 69(1)–(3).
487. The war in the former Yugoslavia caused several tides of refugees to flood into Hungary. In 1994, 7,110 refugees were officially registered, but the government esti-

mated that more than 30,000 more were living unregistered in private homes. U.S. Department of State Report, March 1995.

488. USDS Report, 1993.

489. See also *Amnesty International Annual Report Entry 1993: Hungary.*

490. USDS Report, 1995.

491. Hungarian constitution, art. 6 (1)–(3).

492. "Hungary: Over 60,000 Signatories Attack Church Law Amendment," BBC Monitoring Service, July 8, 1993.

493. Rett R. Ludwikowski, *The Crisis of Communism: Its Meaning, Origins, and Phases* (1986), 1–31.

494. Rett R. Ludwikowski, "Socialist Legal Theory in the Post-Pashukanis Era," *Boston College International and Comparative Law Review* 10 (1987): 329–32.

495. See Leszek Kolakowski, *Main Currents of Marxism* (1978), 157.

496. M. N. Todorova, "Improbable Maverick or Typical Conformist? Seven Thoughts on the New Bulgaria," in *Eastern Europe in Revolution,* n. 2.

5 The Fabric of the New Constitutions: Overview of a Model

1. Rett R. Ludwikowski, "Searching for a New Constitutional Model for East-Central Europe," *Syracuse Journal of International and Commerce Law* 17 (1991).

2. The constitutions studied were adopted from 1982 to 1991 and thus provide the best indication of the most current trends in constitutionalism. These constitutions are from highly diverse countries throughout widely divergent parts of the world and represent a broad range of social and economic backgrounds. The constitutions and their years of adoption are Afghanistan 1990, Algeria 1989, Brazil 1988, Burkina Faso 1991, Chad 1989, China 1982, Colombia 1991, Haiti 1987, Honduras 1982, Laos 1991, Liberia 1984, Namibia 1990, Nepal 1990, The Netherlands 1983, Nicaragua 1987, Nigeria 1989, Sierra Leone 1991, Suriname 1987, Tuvaly 1986, and Turkey 1982.

3. An exception to this is the Chinese constitution, which contains no amendment provision.

4. The comparison is based on a review of five newly adopted or fundamentally changed constitutions of Hungary (text of amended constitution published Aug. 24, 1990), Bulgaria (July 13, 1991), Romania (Dec. 23, 1991), Estonia (July 3, 1992), Slovakia (Sept. 1, 1992), five more "mature" constitutional drafts prepared in Albania (Mar. 1991), Poland (the Seym's Project of Aug. 24, 1991), Lithuania (Feb. 26, 1992), Belarus (Apr. 6, 1992), and Ukraine (June 10, 1992). Only the Hungarian and Albanian documents are relatively short, containing seventy-eight and 121 articles, respectively. The Ukrainian draft is extremely long, numbering 258 articles. The others range from 151 (Lithuanian) to 177 (Slovakian) articles.

5. Yeltsin's Speech to the Nation Introducing the New Draft Constitution, Nov. 9,

1993, BBC, World Broadcasts, Nov. 11, 1993, available on LEXIS, Nexis Library, BBCSUB File.

6. Herman Schwartz, "The Bill of Rights in America and Central East Europe," *Harvard Journal of Law and Public Policy* 15 (1992): 97.

7. Ibid.

8. William F. Fox, "Amending the Constitution to Accomplish Social Goals," *Social Thought* (1983): 3.

9. See, for example, the Polish People's Republic constitution of 1952, or the USSR constitution of 1977, in William B. Simons, *The Constitutions of the Communist World* (1980), 288, 352.

10. Eight of the reviewed acts have short preambles, but two of them, the constitution of Romania of Dec. 1991 and the draft of the Lithuanian constitution of Feb. 1992, contain no preambles at all.

11. In the Hungarian constitution (as amended Aug. 24, 1990) the amendment provisions are short and are included in the section on the national assembly. See *Hungarian constitution,* art. 24, §§ 3, 5.

12. W. Sokolewicz, "Democracy, Rule of Law, and Constitutionality in Post-Communist Society of Eastern Europe," *Droit Polonais Contemporain* (1990), 5–6 n. 2.

13. The search for a common structure of the new constitutions (see the previous subchapter) has been restricted to the newly adopted constitutions and the drafts that provided relatively elaborate concepts of their constitutional provisions. This subchapter and the following ones are searching for general common features of the new East European constitutionalism. For this reason, I used all of the new constitutional drafts available to me. Besides the texts listed in the note, they are draft of the constitution of Kazakhstan (June 2, 1992), Kyrghyzstan (June 16, 1992, and Aug. 1992), Azerbaijan (undated, submitted to CEELI evaluation in July 1992), draft constitution of the Russian Republic (Mar. 30, 1992), the constitution of the Republic of Hungary (as amended Aug. 24, 1990), the draft constitution of Albania (Mar. 1991), and the draft constitution of the Polish senate (Oct. 1991).

14. No clear reference to the concept of state as *état de droit* appears in the constitution of Estonia or the draft constitution of Poland prepared by the commission of the senate.

15. See Sokolewicz, "Democracy, Rule of Law," 6 (referring to Abraham Lincoln's famous formula of "government of the people, by the people, for the people").

16. Kyrghyzstan constitution (1992 Koichuyev draft).

17. Several scholars have studied in detail the concept of *état de droit* in East-Central European doctrine. See Kazimierz Dzialocha, "Państwo Prawne w Warunkach Zmian Zasadniczych Systemu Prawa R.P." (The State of Law in the Light of Fundamental Changes of the Republic of Poland's System of Law), 1 *Państwo i Prawo* (State and Law) (1992): 13–27; Janina Zakrzewska, "Konstytucyjna Zasada Państwa Prawnego w Praktyce Trybunału Konstytucyjnego" (The Constitutional Principle of the Legal State in the Practice of the Constitutional Tribunal), *Państwo i Prawo* 7 (1992): 13–14;

Janina Zakrzewska, "Trybunał Konstytucyjny—Konstytucja—Państwo Prawa" (The Constitutional Tribunal—the Constitution—the State of Law), *Państwo i Prawo* 1 (1992): 3–12; Wojciech Sokolewicz, "Konstytucjonalizm Europejski i Przyszta Polska Konstytucja" (European Constitutionalism and a Future Polish Constitution), *Państwo i Prawo* 8 (1992): 3–17.

18. Constitution of Romania, title III, chap. I, §3, art. 72, and draft constitution of the Republic of Poland (prepared by the Seym commission), art. 6.

19. See constitution of Romania, title I, art. 11, constitution of Republic of Hungary, chap. I, §7(1); Russian Federation constitution, art. 3, §4 (draft); Polish constitution, art. 7, §2 (Seym draft); Slovak constitution, art. 9.

20. See Sokolewicz, "Democracy, Rule of Law," 8. An exception to the rule of a clear determination of the state's functions is the provision of the draft constitution of the Republic of Azerbaijan, which reads: "The authorities of the President, unlike the authorities of Parliament, need not be exhaustively defined. The authorities of the President are determined by the formula: 'Questions that are not the subject of legislation are addressed through executive [administrative] procedures.' "

21. All of the new constitutions provide for one of the forms of judicial review. Most of them clearly address the principle of the division of powers. The constitutions of Hungary and Slovakia and the draft constitution of Albania provide no clear reference to this rule. Similarly, the Seym's draft of the constitution of Poland does not clearly recognize the significance of the division of powers. Reference to this principle can be found, however, in the draft constitution of Poland, prepared by the senate's commission.

22. Art. 1 of the draft prepared by the Polish Seym's commission reads, "Polish Republic is a democratic, state of law, following the principles of social justice." This description of the state as "social" is missing in the Polish senate's draft.

23. See Hungarian constitution, chap. I, §9; Russian Federation constitution, art. 9, §1 (draft) (referring to "the social market economy"); Romanian constitution, title IV, art. 134 (stating "the economy of Romania is a market economy"); Slovakian constitution, art. 59 (calling the state "a socially and ecologically oriented market economy").

24. See Kazakhstan constitution, art. 45 (1992 draft); Ukraine constitution, art. 6 (1992 draft); Azerbaijan constitution, §IV (1992 draft).

25. Albanian constitution, arts. 19 and 20 (1991 draft) ("the State attends to planning the entire economic and social activity and to harmonizing national and local interests, with a view to meeting the material and cultural needs of the society and strengthening the independence and defense of the country. The state exercises control over internal and foreign trade"). The Estonian constitution, art. 32 ("the law may establish, in the public interest, categories of property in Estonia which are reserved for ownership by Estonian citizens, certain categories of legal entities, local government or the Estonian state"). Kazakhstan constitution, art. 47 (1992 draft) ("the land, its depths, waters, vegetable and animal worlds, and other natural resources are within the exclusive ownership of the Republic of Kazakhstan").

26. Alexander Hamilton, *Federalist No. 9*, ed. Clinton Rossiter (1961), 72–73.

27. James Madison, *Federalist No. 47*, 301.
28. Mauro Cappelletti, "Repudiating Montesquieu? The Expansion and Legitimacy of Constitutional Justice," *Catholic University Law Review* 35 (1985): 11, 12–14. See also Montesquieu, *The Spirit of the Laws* (1989), 160.
29. Cappelletti, "Repudiating Montesquieu?" 14.
30. Arthur T. von Mehren and James R. Gordley, *The Civil Law System* (1977), 217 n. 3.
31. Fred R. Harris, *America's Democracy* (1983), 58–59.
32. Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* (4th ed.; 1931), 187.
33. E. C. S. Wade and A. W. Bradley, *Constitutional Law* (1970), 25.
34. H. J. Uibopuu on the separation of powers, in F. J. Feldbrugge, ed., *Encyclopedia of Soviet Law* (1985), 695.
35. Romanian constitution, arts. 58, 80, 101, and 123; Albanian constitution, arts. 67, 76, 84, 106 (1991 draft).
36. The Seym draft of the Polish constitution of 1991 did not make any clear reference to the principle of the division of powers. In contrast, art. 4 of the draft constitution of the Polish senate of 1991 clearly stated that "the State's power is executed by the separated and balanced legislative, executive, and judicial organs." *Projekty Konstytucyjne 1989–1991* (Constitutional Drafts, 1989–1991) (1992). The newest draft of the constitution (still not completed) of Jan. 1995 spells out clearly that "the state's power is carried out by divided and mutually balanced (and cooperating) legislative, executive and judicial organs" (art. 9), *Uniform Draft of the Constitution of Republic of Poland* (several variants presented), Jan. 1995, 3.
37. Albanian constitution, chap. IV (1991 draft); Romanian constitution, chap. V, §1, art. 122. In Bulgaria "the oblast governors" are appointed by the council of ministers (Bulgarian constitution, art. 143, §1). However, township mayors are "elected by the inhabitants or the township councils" (art. 139). In Kirghizstan, "akims," chief officers of local state administration, "act as the direct representatives of the President of the Kyrghyz Republic," Kyrghyzstan constitution, art. 82 (1992 draft). See also Kazakhstan constitution, art. 103 (1992 draft).
38. Slovak constitution, chap. VIII, arts. 155–56 (CSFR's proposed draft) (1991), U.S. Department of Commerce, NTIS, "Central and Eastern European Legal Texts," Dec. 23, 1991.
39. C. F. Strong, *The Modern Political Constitution* (1949), 67.
40. Howard Lee McBain and Lindsay Rogers observed in 1922 that all new European constitutions, with the exception of Finland's, Estonia's, and Yugoslavia's, provided for bicameral legislatures. *The New Constitutions of Europe* (1922), 38.
41. This rationale was visible in the intentions of the drafters of the constitutions of the French Third and Fifth Republics. Alex N. Dragnich and Jorgen Rasmussen wrote, "Turning to the distribution of power between the two houses of Parliament in the Fourth Republic the upper chamber was a weak body, quite in contrast to the Senate of the Third Republic, known as the Council of the Republic. In returning the

Fifth Republic to the old name for the upper house, an effort was made to restore that chamber to much of its former power. This was a deliberate political tactic. The Gaulists were uncertain of their ability to control the lower house, but were confident that they would have an ally in the conservative upper house. Therefore they sought to give it considerably more power than that possessed by the Council of the Republic in the Fourth Republic." *Major European Governments* (1982), 263. This was also the intention of the drafters of the German basic law of 1949. The German emergency legislative procedure gives the chancellor the possibility of overcoming a legislative deadlock and of ruling for six months with the assistance of the Bundesrat (the upper house) if the chancellor resolves not to call new elections (art. 81).

42. McBain and Rogers, *New Constitutions of Europe,* 38.

43. Chris Osakwe, "The Common Law of Constitutions of the Communist-Party States," *Review of Socialist Law* 3 (1977): 177.

44. Konstanty Grzybowski, *Senat albo Niedemokratyczny albo Niepotrzebny* (Senate Either Anti-Democratic or Unnecessary) (1946); see also Z. Jarosz, "Problem drugiej izby parlamentu—Zarys Koncepcji" (A Problem with the Second Chamber of Parliament—Outline of the Concept), *Państwo i Prawo* 44 (Jan. 1989): 16–28.

45. See Wojciech Sokolewicz, "Kwietniowa Zmiana Konstytucji" (April Constitutional Changes), *Państwo i Prawo* 6 (June 1989): 3–19.

46. The Ukrainian draft of June 1992 states that the territory of the state is "one, indivisible, inviolable and whole" (art. 7), but it confirms the status of Crimea as an autonomous republic and the right to a strong self-government of other regions. Art. 128 refers to the Ukrainian upper chamber (the council of delegates) as "a territorial representative body." See draft of the constitution of Ukraine (submitted to CEELI by the constitutional committee of Ukraine), June 10, 1992.

47. Some inclinations toward bicameralism were observed in Kyrghyzstan. The draft constitution of June 16, 1992, provided for one chamber, the Mejilis, but the outline of the new constitution drafted by Turar Koichuyev mentioned two chambers, the chamber of representatives and senate.

48. Douglas V. Verney, "Parliamentary vs. Presidential Systems: Analysis of Political Systems," in Eckstein and Apter, eds., *Comparative Politics: A Reader* (1963), 175–78.

49. For a more elaborate list of basic features of the presidential and parliamentary systems, see ibid., 175–91.

50. Ibid., 186–87; see also Harris, *America's Democracy,* 58.

51. Verney, "Parliamentary vs. Presidential Systems," 179.

52. Ibid., 181.

53. Ibid.

54. Dragnich and Rasmussen, *Major European Governments,* 398.

55. "The constructive vote of no confidence" means that the Bundestag can express its lack of confidence in the federal chancellor only with the absolute majority of its members requesting that the federal president dismiss the chancellor and then elect a successor. "The legislative emergency procedure" means that with the support of the

federal president and the Bundesrat, the chancellor may enact law for six months, even without the support of a majority of the Bundestag—unless the Bundestag elects a new chancellor by absolute majority. Basic Law of the Federal Republic of Germany, arts. 67, 80a, and 81.

56. Verney, "Parliamentary vs. Presidential Systems," 184.

57. The new draft of the Constitution of Ukraine allows the president to dissolve the Chamber of Deputies after consultations with the Prime Minister and the Chamber's Chairman (art. 90 of the draft dated February 24, 1996). Compare with different wording of Art. 181 and 154 of the draft of Ukrainian Constitution prepared on June 10, 1992. See also art. 81 of the Constitution of Belarus, art. 64 and 47#5(3) of the Constitution of Kyrghyzstan. The Constitution of Kazakhstan does not clearly explain executive prerogatives with regard to early dissolution of parliament.

58. D. Olson, "Feature: Parliament by Design," *East European Constitutional Review* (Spring 1995): 59.

59. See Mauro Cappelletti and William Cohen, *Comparative Constitutional Law: Cases and Material* (1979), 6–8.

60. Hamilton, *Federalist No. 9*, 467.

61. It should be noted that Alan R. Brewer-Carias in *Judicial Review in Comparative Law* (1989), 125–55 lists only three of the conditions mentioned above, specifically 2, 3, and 4.

62. Mauro Cappelletti, *Judicial Review in the Contemporary World* (1971), 46–52; Allan R. Brewer-Carias, *Judicial Review in Comparative Law* (1989), 125–55.

63. Ibid.

64. Brewer-Carias, *Judicial Review*, 225.

65. Ibid., 186.

66. Ibid.

67. Cappelletti, *Judicial Review*, 10.

68. For more detailed analysis of the traditions of judicial review in East-Central Europe, see Rett R. Ludwikowski, "Judicial Review in the Socialist Legal System; Current Developments," *International and Comparative Law Quarterly* 37 (1988): 89–108.

69. Cappelletti, *Judicial Review*, 58.

70. Both the Albanian and Rumanian constitutional acts follow several features of a French constitutional model. See arts. 140–45 of the Romanian constitution, and arts. 116–18 of the draft constitution of Albania.

71. Walter F. Murphy and Joseph Tannenhaus, *Comparative Constitutional Law* (1977), 32.

72. *Grundgesetz* (Constitution) (GG), art. 93 (FRG).

73. Ibid.

74. Ibid., art. 100 § 1.

75. Ibid., arts. 21 and 18 (dealing with the court's right to curb the rights of those individuals whose behavior threatens the "free democratic basic order").

76. Ibid., art. 93(4)(a).

77. Poland adopted a centralized and a limited "mixed" system of judicial review. The right to review constitutionality was vested in the constitutional tribunal only, and the right to file a petition was originally vested in the main organs and officials of the state who could directly initiate review, submitting abstract questions without any pending litigation. It resembled the classic Austrian abstract model. However, review by the tribunal could also be initiated by regular courts addressing inquiries in connection with judicial proceedings. This resembled concrete review. Access to the court was still indirect because the inquiry could be submitted by presidents of the supreme courts or central administrative organs. The tribunal could not invalidate substatutory acts, and its decisions concerning statutory acts were subject to the Seym's approval. The Seym could overrule the tribunal's decisions by a qualified two-thirds majority. See chapters on Russia and Ukraine, above.

78. Quotation from 2d ed., *The General Principles of Constitutional Law in the United States of America* (1891), 21–22. The 1st ed. was published in 1880.

79. James Bryce, *Constitutions* (1884), 8.

80. Ibid., 21, 66.

81. K.C. Wheare, *Modern Constitutions* (1966), 16.

82. Bryce, *Constitutions,* 31–36, 43–46.

83. Wheare, *Modern Constitutions,* 17.

84. Leslie Wolf-Phillips, *Constitutions of Modern States* (1968), VII.

85. Ibid.

86. Greg Asciolla, "Adopting and Amending Constitutions in Eastern Europe" (unpublished paper prepared under my supervision). I would like to recognize Mr. Asciolla's contribution to the research for this subchapter.

87. Several countries' constitutions required a two-thirds majority for constitutional amendments. See the constitutions of Romania, art. 56; Poland, art. 106; Bulgaria, art. 143; Hungary, art. 24, and the USSR, art. 174. The Czechoslovakian constitution required a three-fifths majority (art. 41), while the GDR's constitution required only a plurality (art. 106).

88. The following provision even further complicates the process. "If a motion is approved by less than three-quarters but no less than two-thirds of the votes of the national representatives, the motion is resubmitted for consideration after two months have elapsed, but before the passage of five months. In any new debate, a motion may be approved if at least two-thirds of the national representatives have voted for it." Bulgarian constitution, art. 154, §2, art. 155 §§1–2. One must observe that the process of amending is elaborate, although the difference between a two-thirds (eight-twelfths) and three-fourths (nine-twelfths) majority is not significant.

89. Bulgarian constitution, art. 158.

90. Romanian constitution, arts. 146–48.

91. The Estonian constitution also provides an emergency proceeding for amending the constitution. Specifically, "a proposal to consider a proposed amendment to the Constitution as a matter of urgency shall be adopted by the Riigikogu by a four-fifths

majority. In such a case the law to amend the Constitution shall be adopted by a two-thirds majority of the complement of the Riigikogu." Estonian constitution, art. 166 (1992 draft).

6 Constitutional Rights, Freedoms, and Duties

1. H. Lauterpacht, *International Law and Human Rights* (1963), 80–88.
2. Robert A. Rutland, *The Birth of the Bill of Rights, 1776–1791* (1955), 116.
3. Ibid.
4. See Melancthon Smith, "An Address to the People of the State of New York of 1788," in Paul E. Ford, ed., *Pamphlets on the Constitution of the United States Published During Its Discussion by the People, 1787–1788* (1988), 114. The Anti-Federalist Whitehill argued at the Pennsylvania Ratifying Convention of 1787 that "he anticipates annihilation of the state governments which would destroy civil liberties"; see A. T. Mason, *Free Government in the Making in American Political Thought* (1965), 267–73. For arguments of the "Antifederalist Lenoir in the North Carolina Ratifying Convention," see ibid., 275.
5. Letters of Thomas Jefferson to James Madison, Dec. 20, 1788, and Madison to Jefferson, Oct. 20, 1788, in A. T. Mason, *Free Government in the Making* (3d ed. 1977), 329–30. See also Charles Warren, *The Making of the Constitution* (1931), 81.
6. *The Debates and Proceedings in the Congress of the United States* (1934), I, 431–42. Hereinafter *Annals*. H. Taylor wrote: "If anything is certain in the history of any country it is that the essence of the English constitutional system as reformed by the Revolutions of 1640 and 1688 and as defined by Blackstone in 1758, passed into our first state constitutions, whose bills of rights set forth, for the same time, in a written and dogmatic form, the entire scheme of civil liberty as it existed in England in 1776." *The Origin and Growth of the American Revolution* (1911), 361.
7. Ibid., 436. The British Bill of Rights of 1689 did not proclaim freedom of speech. It provided only that "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court." E. C. S. Wade, *Constitutional Law* (1970), 8. The American Founding Fathers correctly discerned origins of bills of rights in the procedures and institutions established to limit the power of government. From this point of view, it is natural that they looked for precedents in British constitutional traditions rather than in the history of French absolutism. In fact, however, they overlooked the constitutional experience of other European countries that, like Poland, had a 450-year tradition of struggle to restrain the king's power and to create institutions fundamental to a constitutional government. The Polish nobility had its habeas corpus act much earlier than did the nobility in other European countries, and its due process clause was well-established at the beginning of the fifteenth century. See Rett R. Ludwikowski, "Two Firsts: A Comparative Study of the American and the Polish Constitutions," *Michigan Yearbook of International Legal Studies* 8 (1988): 121. See also W. Osiatynski, "Constitutionalism and Rights in the History of Poland," in

Louis Henkin and Albert J. Rosenthal, eds., *Constitutionalism and Rights: The Influence of the United States Constitution Abroad* (1990), 284–314.

8. For a more profound analysis of the American contribution to the French Declaration of the Rights of Man and Citizen, see Rett R. Ludwikowski, "The Beginning of the Constitutional Era: A Bicentennial Comparative Study of the American and French Constitutions," *Michigan Journal of International Law* (1989): 11/1.

9. As Bernard Fay wrote, "A detailed comparison of the French Declaration of the Rights of Man and Citizen with the preambles of these three constitutions brings out a striking resemblance." *The Revolutionary Spirit in France and America* (1927), 266. Albert P. Blaustein, supporting this opinion wrote, "thus, while the famous French Declaration of the Rights of Man and Citizen of August 1789, was officially the work of LaFayette, Mirabeau, and Jean Joseph Mounier, it also had claim to American parentage." *The Influence of the United States Constitution Abroad* (1986), 16.

10. *Annals* (The Debates and Proceedings in the Congress of the U.S. Vol. 1) [hereinafter Annals] 247.

11. Ibid., 424–48; J. Boyd, ed., *The Papers of Thomas Jefferson* (1959), 230–31.

12. Annals, 72, 88, 778, 779, 913 J. Stewart, *Documentary Survey of the French Revolution* (1951), 112–15; F. N. Thorpe, *The Constitutional History of the United States* (1901), 257–59.

13. The comments comparing the American Bill of Rights and the French Declaration are a lightly edited version of my remarks published as "The French Declaration of the Rights of Man and Citizen and American Constitutional Development," *American Journal of Comparative Law* 38 (1990, supp.): 453–57.

14. See G. Lefèbvre, *The French Revolution from Its Origins to 1793* (1962), 146. The most exhaustive comparison of the French Declaration and the Virginia Bill of Rights was presented by Robert R. Palmer, in *The Age of Democratic Revolutions* (1959), appendix IV, 518–21. Palmer concludes that "there was in fact a remarkable parallelism" between both acts. Ibid., 487.

15. The American Declaration of Independence states that "all Men are created equal, that they are endowed by their Creator with certain inalienable Rights." The Virginia Bill of Rights of 1776 declares that "all men are by nature equally free and independent, and have certain inherent rights." F. Thorpe, ed., *The Federal and State Constitutions* 7 (1909): 3813. Hereinafter Virginia Bill of Rights.

16. "Déclaration des Droits de l'Homme et du Citoyen," reprt. J. Roberts, *French Revolution Documents* 1 (1966): 171–73. Hereinafter *French Declaration.*

17. J. Godechot, *Les Révolutions, 1770–1799* (1963), 96. On the one hand, the idea of equality appealed to an American sense of justice; on the other, Americans feared that in practice it would collide with individual freedom. Generally, they were satisfied with equality before the law and felt uncomfortable with French attempts to extend equality to social and economic relations. John Adams wrote: "By the law of nature all men are men not angels—men and not lions—men and not whales—men and not eagles—that is, they are of the same species. And this is the most that the equality of nature amounts to. But man differs by nature from man almost as much as man from beast. The

equality of nature is moral and political only and means that all men are independent." Adams quoted in C. Hazen, *Contemporary American Opinion of the French Revolution* (1964), 274–75. On the limits of American dedication to the creation of an egalitarian society, see R. Morris, *The Emerging Nations and the American Revolution* (1970), 21–22.

18. In 1789 the French assembly generally showed a greater sensitivity to egalitarian values than did the framers of the American Declaration. Still, it took several years to turn this sensitivity into a fully expressed egalitarian program. Attacks on private property from such socialists as Gabriel B. Mably or F. Morelly, or Jean-Jacques Rousseau's well-known criticism of law as an instrument of exploitation and his accusation of excessive accumulation and unequal distribution of property, did not find an endorsement in 1789. The assembly recognized property as scared (art. 17) and established a representative system, based on a property qualification. For more exhaustive comments, see K. Martin, *French Liberal Thought in the Eighteenth Century* (2d ed.; 1954), 220–58.

19. See R. R. Palmer, *The Age of Democratic Revolution: The Challenge* (1959), 518–20.

20. The French assembly promulgated a series of acts relating to ecclesiastical reorganization, the most significant of them being the decree of December 2, 1789, on the confiscation of church property and the civil constitution of the clergy, which bond the clergy with the state through prescribed oaths, salaries, and newly established ecclesiastical districts. J. Stewart, *Documentary Survey of the French Revolution* (1951), 167–89.

21. See Palmer, *Age of Democratic Revolution,* 250.

22. Hazen, *Contemporary American Opinion,* 153. In fact, French religious instability was highly influential on American attitudes. The fluctuations from religious infidelity to the orthodoxy of the Jesuits and the Ultramontanism of J.-M. de Maistre scared Americans. "France instead of being a country to admire and pattern after, was now a nation to pity and despise." H. M. Jones, *America and French Culture* (1927), 447–48.

23. *French Declaration,* art. 6.

24. The concept of "general will" (*la volonté générale*) was basically anti-individualistic. It was discussed by Montesquieu, Holbach, Diderot, and other philosophers, but Rousseau was recognized as its main proponent. For Rousseau, the general will was indivisible and inalienable. It embodied the interests of society as a whole. For Rousseau's influence on the French Revolution, see J. McDonald, *Rousseau and the French Revolution, 1762–1791* (1965); J. Talmon, *The Origins of Totalitarian Democracy* (1960); A Meynier, *Jean-Jacques Rousseau: Révolutionnaire* (1911).

25. Trans. and reprt. Stewart, *Documentary Survey,* 50.

26. Art. 1 of the French Declaration of the Rights of Man and Citizen of Aug. 27, 1789; and art. 1 of the French Declaration added as preamble to the constitution of June 24, 1793. For both texts, see Rett R. Ludwikowski and William F. Fox, *The Beginning of the Constitutional Era* (1993), 151, 225.

27. See Norman Dorsen, "Civil Liberties," in Leonard Lavy, ed., *Encyclopedia of the Constitution* (1986), 263–70.

28. *Jackson* v. *City of Joliet*, 715 F.2d 1200, 1203 (7th cir., 1983).
29. See Geoffrey Bruun, "The Constitutional Cult in the Early Nineteenth Century," in C. Read, ed., *The Constitution Reconsidered* (1938), 263. For the texts of the constitutions of 1795 and 1799, see Stewart, *Documentary Survey*, 571–612, 768–79.
30. H. Lauterpacht, *International Law and Human Rights* (1968), 89–90.
31. The first written European constitution, and the world's second, the Polish constitution of May 3, 1791, did not have a separate bill of rights. Poland's constitution slightly changed the rights of the nobility and recognized the rights of burghers and peasants. Generally speaking, however, its drafters were more concerned about the excessive growth of noblemen's political freedoms than about the lack of civil liberties. See Ludwikowski, "Two Firsts," 117–56; see also Leslaw Kanski, "Human Rights in Poland from a Historical and Comparative Perspective," in Kenneth W. Thompson and Rett R. Ludwikowski, eds., *Constitutionalism and Human Rights: America, Poland and France* (1991), 121–41.
32. Art. 16 of the constitution of Sweden, June 6, 1809, Walter Fairleigh Dodd, ed., *Modern Constitutions* (1909), II, 223–24.
33. Ibid., art. 86.
34. Different, however, than the U.S. Constitution, the constitution of Norway of November 4, 1814, provided that "the Evangelical Lutheran religion shall remain the public religion of the state." Ibid., 123.
35. Constitution of Belgium, Feb. 7, 1831, ibid., 127–30.
36. Lauterpacht, *International Law*, 89–90.
37. For an analysis of early experiments with judicial review in Europe, see Louis Favoreu, "Constitutional Review in Europe," in Louis Henkin and Albert J. Rosenthal, eds., *Constitutionalism and Rights: The Influence of the United States Constitution Abroad* (1990), 38–62.
38. See Helmut Steinberger's comments on fundamental rights in nineteenth-century Germany. Ibid., 202.
39. Ibid., 385.
40. Wiktor Osiatynski, in Kenneth W. Thompson and Rett R. Ludwikowski, eds., *Constitutionalism and Human Rights: America, Poland and France* (1991), 156.
41. See arts. 4, 6, 9, and 12 of the constitution of Spain of 1876, or arts. 5, 6, and 7 of the constitution of the Netherlands of 1887. Dodd, ed., *Modern Constitutions*, 81, 200–201.
42. For example, see arts. 119, 132, and 133 of the constitution of the German Reich, Aug. 11, 1919; art. 75 of the constitution of Finland, July 17, 1919, in Howard Lee McBain and Lindsay Rogers, *The Constitutions of Europe* (1922), 199–201, 482.
43. See art. 119, in ibid., 199.
44. See art. 81 in ibid., 483.
45. Henkin and Rosenthal, eds., *Constitutionalism and Rights*, 8–9.
46. For more extensive comments on the growing influence of American jurisprudence in the twentieth century, see Anthony Lester, "The Overseas Trade in the

American Bill of Rights," *Columbia Law Review* 88 (1988): 537–61; Roger Errera, "The Freedom of the Press: The United States, France, and Other European Countries," in Henkin and Rosenthal, eds., *Constitutionalism and Rights,* 63–93; John Paul Stevens, "The Bill of Rights: A Century of Progress," in Geffrey R. Stone, Richard A. Epstein, and Cass R. Sunstein, eds., *The Bill of Rights in the Modern State* (1992), 13–38.

47. Henkin and Rosenthal, eds., *Constitutionalism and Rights,* 13; Richard B. Lillich, "The Constitution and International Human Rights," *American Journal of International Law* 83 (1989): 851–62.

48. Chris Osakwe, "The Common Law of Constitutions of the Communist-Party States," *Rev. Soc. Law* 3 (1977): 155–217; see also Rett R. Ludwikowski, "The Common Core of the Socialist Constitutions," in "Searching for a New Constitutional Model for East-Central Europe," *Syracuse Journal of International Law and Commerce* 17 (1991): 125–36.

49. Osakwe, ibid., 190. Boris Tchechko's evaluation of Stalin's constitution of 1936 illustrates this thesis well: "One such a view of the relentless stages in the economic evolution of mankind and the associated rights of man, the 1936 Constitution of the U.S.S.R., rightly called the 'Stalin' Constitution, not only constitutes one of the most decisive stages in the advance of the ideas of the democratic emancipation of man, but also—and this is of vital importance—sets man as a worker in ideal political, social and economic conditions, and gives him facilities for work and intellectual life." In UNESCO, ed., *Human Rights, Comments and Interpretation* (1949), 159.

50. Art. 59 of the constitution of the USSR, adopted Oct. 7, 1977, in Donald D. Barry and Carol Barier-Barry, *Contemporary Soviet Politics* (1982), 371.

51. As John F. Copper wrote about the People's Republic of China's approach to the issue of human rights: "Mao specifically rejected the notion espoused by some social contract theorists that the individual possesses certain inalienable rights vis-à-vis the state irrespective and independent of the Individual's duties, obligations, or responsibilities. The theoretical position taken by Mao and other Chinese Communist leaders was that rights derived from duties. Without duties there were no rights. Furthermore, these duties were objective and concrete, not abstract and theoretical. For that reason, citizens' duties were specified in all of China's constitutions. When duties and rights are seen together, one cannot help but come to the conclusion that in the Chinese context duties are more important, or maybe all important. One also cannot help but wonder if failure to fulfill duties may result in the loss of human rights. Putting rights generally above duties in Western constitutions gives a different impression." Yuan-li Wu, Franz Michael, John F. Copper, Ta-ling Lee, Maria Hsia Chang, A. James Gregor, *Human Rights in the People's Republic of China* (1988), 11.

52. Soviet constitution (1977), art. 39.

53. Ibid., arts. 50–51.

54. Osakwe, *Common Law of Constitutions,* 194–95.

55. Copper, *Human Rights in the People's Republic of China,* 12.

56. For more comments, see Rett R. Ludwikowski, "Judicial Review in the Socialist Legal System: Current Developments," *International and Comparative Law Quarterly* 37 (Jan. 1988): 89–108.
57. Osakwe, *Common Law of Constitutions,* 195.
58. Soviet Constitution (1977), art. 121.
59. Ibid., arts. 164–65.
60. Soviet Constitution (1977), arts. 39–46, 369–70.
61. Constitution of Hungary, art. 8 (1).
62. Slovak constitution, art. 12 (1).
63. Constitution of Romania, art. 15 (1).
64. Law on a Supplement to the Law No. 7491, April 29, 1991 "On Principal Constitutional Provisions," preamble.
65. Slovak constitution, art. 13 (1).
66. Ibid., art. 25(1).
67. Albanian charter of rights, Mar. 31, 1993, art. 2.
68. Albanian interim constitution, art. 10.
69. Commentary on the Polish constitutional drafts by Wojciech Sadurski, "Myślenie Konstytucyjne: Prawa Drugiej Kategorii" (Constitutional Thinking: The Second-Rank Rights) *Kultura (Culture),* no. 230, Oct. 3, 1994.
70. Ibid.
71. For more comments on the reason for repudiating the American model of constitutional review, see Rett R. Ludwikowski, "Judicial Review in the New East-Central European Constitutions," in Ludwikowski, *Constitution Making in the Countries of Former Soviet Dominance: Current Development, Georgia Journal of Int'l and Comp. Law* 23: 155, 257–68.

Conclusion: One or Many Models?

1. Art. 43, sec. 2/1, constitution of Ireland, see Walter F. Murphy and Joseph Tannenhaus, *Comparative Constitutional Law* (1977), 740.
2. Arts. 14 and 20, basic law of the Federal Republic of Germany, 704.
3. Art. 25, constitution of Japan, 714.

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ANNEX

LAW ON THE MAJOR CONSTITUTIONAL PROVISIONS OF THE PEOPLE'S ASSEMBLY OF THE REPUBLIC OF ALBANIA

(Adopted April 29, 1991)

[It has been] decided

Chapter I: General Provisions

Article 1. Albania is a parliamentary republic. National sovereignty stems from the people and belongs to them.

Article 2. The Republic of Albania is a juridical and democratic state. Man's dignity, his rights and freedoms, free development of his personality as well as the constitutional order, equality before the law, social justice and pluralism are the foundations of this state, whose duty is to observe and defend them.

Article 3. The fundamental principle of state organisation is the division of the legislative, executive power and judicial one. The people exercise their power through their representative organs and referendum as well. The representative organs are elected by free, general, equal, direct and secret ballot. State activity is exercised only by the state organs recognised by law.

Article 4. The Republic of Albania recognises and guarantees the fundamental human rights and freedoms, those of national minorities, admitted in the international documents.

Article 5. The legislative power belongs to the People's Assembly of the Republic of Albania. The head of the state is the President of the Republic elected by the People's Assembly. The rights and duties of the president are set by this law. The supreme organ of the executive power is the Council of Ministers. The rights and duties of the Council of Ministers are set by this law. The judicial power is exercised by courts which are independent and are guided only by law.

Article 6. Political pluralism is one of the fundamental conditions of democracy in the Albanian state. The political parties and other organisations, are created and exercise their activity according to the law. They are fully separated from the state. It is prohibited the activity of political parties in military units and institutions of the Ministry of Defence and the Minister of the Interior, the Ministry for Foreign Affairs and diplomatic representations abroad, the attorney's offices, investigation offices, courts, etc. The departisation and depoliticisation of organs is done by law.

Article 7. The Republic of Albania is a secular state. The state observes the freedom of religious belief and creates conditions to exercise it.

Article 8. The legislation of the Republic of Albania considers, recognises and observes the principles and norms of the international law generally accepted. The strict and similar application of juridical norms is compulsory for all the state organs, political parties, other organisations, employees as well as for other physical and juridical persons. All the citizens are equal to the law.

Article 9. Concerning the relations with foreign countries the Republic of Albania defends the national independence and interests, pursues the policy of co-operation and good neighbourliness, international peace and security. The Republic of Albania takes care for the recognition and observation of the national and democratic rights of the Albanians residing outside the state borders of the Republic.

Article 10. The country's economy is based on the diversity of ownership, free initiative of all economic subjects and the regulatory role of the state. Economic initiative of juridical and physical persons cannot develop contrary to the social interest and should not impair the security, freedom and dignity of man.

Article 11. Subjects of the right to ownership are the state, juridical and physical persons. All kinds of ownership are equally defended by law. The assets which are objects of the state property are set by law.

Article 12. The foreign juridical and physical person may gain the right to ownership under the conditions foreseen and guaranteed by law. The foreign physical and juridical person is guaranteed the right to carry out independent economic activity, to invest at home, to form joint ventures and his own under the circumstances set by law. He is also guaranteed the right to transfer profits.

Article 13. It is incumbent upon the juridical and physical persons to contribute to defray the state expenditure in relation to their income. No tax or levy can be established, but by law.

Article 14. The trade unions recognised by law are juridical persons and may sign collective working contracts with the public or private subjects. The way of reaching contracts is defined by law.

Chapter II: The Supreme Organs of the State Power

(a) The People's Assembly

Article 15. The People's Assembly is the highest organ of the state power and the only law-making organ. The People's Assembly exerts sovereignty in the name of the people and state, in the forms and boundaries foreseen by this law.

Article 16. The People's Assembly has the following main competences:

(1) It defines the main directions of the internal and foreign policy of the state.

(2) It approves and changes the Constitution and the laws, decides definitely upon the reconciliation of the laws with the Constitution and makes their interpretation.

(3) It approves the economic and social draft programmes of the country's development and the synthetic indices, as well as the state budget.

(4) It decides on the partial and general mobilisation, the state of emergency and the state of war in case of armed aggression against the Republic of Albania or when this is necessary to fulfil obligations deriving from the international treaties.

(5) It ratifies and denounces the treaties of political character; the treaties or agreements of military character; the treaties or agreements which have to do with the borders of the Republic of Albania; the treaties or agreements which have to do with the fundamental rights and duties of the citizens; the treaties from which derive financial obligations for the state; treaties of agreements leading to changes to the legislation; treaties and other agreements which foresee that their ratification or denunciation be done by the People's Assembly.

(6) It grants amnesty.

(7) It decides on people's referendums.

(8) It elects and discharges the President of the Republic of Albania.

(9) It elects, appoints and discharges the Supreme Court, the Attorney General and his substitutes.

(10) It controls the activity of the Council of Ministers and the attorney-general's office.

(11) It controls the activity of RTV [Albanian radio and television], ATA and other official media of public information, depending on it. The status of these organs is set by law.

(12) It defines the administrative-territorial structure of the country.

(13) It decides on the creation or dissolution of the ministries or other organs equal to them.

Article 17. The People's Assembly is made up of 250 deputies. The People's Assembly is elected for a four-year period. The People's Assembly convenes the first session no later than two months from the day it is elected. The elections to the People's Assembly are held no later than three months from the day its mandate expires. In case of war or state of emergency the People's Assembly can prolong its activity beyond the fixed limit as long as the war or the state of emergency continues.

Article 18. The People's Assembly elects its Presidency, which is made up of the chairman and two deputy chairmen. The activity of the People's Assembly and its Presidency is conducted according to the regulation it has adopted.

Article 19. The People's Assembly convenes its sessions no less than four times a year. The sessions of the People's Assembly convene on the decision of its Presidency. The Presidency convenes the session of the People's Assembly when this is also required by the President of the Republic, the Council of Ministers or by one fourth of the deputies. The meetings of the People's Assembly start when the majority of the deputies is present. The meetings of the People's Assembly are open, except in special cases when the People's Assembly decides otherwise.

Article 20. The People's Assembly elects from its ranks permanent and temporary commissions. In its first session the People's Assembly elects a commission to examine the mandates of the deputies. At the proposal of this commission, the People's Assembly confirms or annuls the mandates of the deputies. It is incumbent upon the perma-

nent commissions to examine the draft laws and normative decrees of the President of the Republic, to follow and control the activity of the ministries and other state organs according to the respective sectors and to forward problems to the People's Assembly or the Council of Ministers. The temporary commissions are created for certain questions.

Article 21. It is the duty of the deputy to the People's Assembly in his activity to serve the people and homeland conscientiously. The rights and duties of the deputy are defined by law.

Article 22. The deputy to the People's Assembly enjoys immunity. The deputy cannot be prevented from accomplishing his duties and obtaining the data which are not state secret. The deputy cannot be controlled, detained, arrested or penally prosecuted without the consent of the People's Assembly. The deputy may be detained without the consent of the People's Assembly only in cases when he commits an apparent and grave crime. The deputy has no legal responsibility for the acts he makes and the stands he adopts while performing his duty as deputy or for the vote he casts.

Article 23. The law-making initiative belongs to the President of the Republic, the Council of Ministers, to every deputy, as well as to a group of 20,000 nationals enjoying the right of voting. The laws and other acts of the People's Assembly besides the constitutional ones, are considered approved, when voted by the majority of the present deputies, but no less than one third of deputies. The laws are declared no later than 15 days following the approval and enter into force 15 days after being published in the official gazette, except for the cases when foreseen differently by the laws as well as the cases of organic laws.

(b) The President of the Republic of Albania

Article 24. The President of the Republic of Albania is the head of state and represents the whole unity of the people.

Article 25. The President of the Republic of Albania, is elected by the People's Assembly having no less than two candidates for five years, by a secret ballot, and by a two-thirds majority of the votes of all the deputies. In case the required majority is not ensured in the first ballot, a second voting is held in which the president of the Republic is elected by the absolute majority of all the deputies' votes. The candidate for president is proposed to the People's Assembly by a group of no less than 30 deputies. In case there are more than two candidates for the post of the President of the Republic, in the second voting the two candidates that have won the greatest number of votes in the first voting have the right to be put up. The candidate that wins the absolute majority of all the deputies' votes considered elected.

Article 26. President of the Republic may be elected from every Albanian national that has reached the age of 40 and that fulfills the conditions to be elected as deputy. The President of the Republic after being elected by the People's Assembly, takes the oath before it. The election of the President of the Republic is made no later than 30 days before the mandate of the former President of the Republic expires. The same person cannot be elected President of the Republic more than twice in succession. In case the

president is elected from among the ranks of the deputies, he gives up the mandate of the deputy. The function of the president is irreconcilable with any other function, besides those foreseen by this law.

Article 27. The President of the Republic is discharged or released before the expiry of his mandate only when

(a) He has committed the crime of betrayal to the homeland or has violated this law.

(b) His health condition prevents his from performing the duties.

(c) He has put up his resignation on his free will.

Article 28. Follow the main competences of the President of the Republic:

(1) Guarantees the observation of this law, other laws and rights and freedoms of citizens.

(2) Convenes the first session of the new legislature of the People's Assembly.

(3) Fixes the date of elections to the People's Assembly and local power organs.

(4) Declares the laws and referendums decided upon by the People's Assembly.

(5) Enjoys the right, within 15 days since the approval of the law by the People's Assembly, to put it up for re-examination by the People's Assembly only once.

(6) Appoints the chairman of the Council of Ministers and accepts his resignation.

(7) Upon the proposal of the chairman of the Council of Ministers, between the two sessions of the People's Assembly, appoints, discharges or releases separate members of the government. The President of the Republic submits this decree for approval to the People's Assembly in its nearest meeting.

(8) He appoints and discharges upon the proposal of the Chairman of the Council of Ministers leaders of other central institutions.

(9) Having the opinion of the Chairman of the Council of Ministers and the Chairman of the Presidency of the People's Assembly, he may dissolve the People's Assembly prior to the expiry of the legislature, when its composition does not allow the performance of the functions of the assembly itself and makes impossible the country's running. On this occasion, the elections to the People's Assembly are held again no later than 45 days since the day of dissolution.

The President cannot exercise this competence over the last six month period of his mandate.

(10) He signs international treaties, ratifies and denounces those not examined by the People's Assembly itself.

(11) He appoints and discharges the diplomatic representatives upon the proposal of the chairman of the Council of Ministers.

(12) Accepts the credentials and letters of call of the diplomatic representatives of foreign states.

(13) Endorses the requirements for granting or casting off Albanian nationality.

(14) Exercises the right of pardon.

(15) Awards decorations and honourable titles.

(16) Grants the right for political asylum.

(17) When it is impossible for the People's Assembly to convene he declares the partial and general mobilisation as well as the state of emergency. In such cases the declaration is submitted for approval to the People's Assembly within five days.

(18) When the convocation of the People's Assembly is impossible, declares the state of war in case of armed aggression against the Republic of Albania.

(19) Issues decrees of individual character and decisions, in urgent cases issues even decrees of normative character, which are submitted for approval to the People's Assembly in its nearest session.

Article 29. The acts issued by the President of the Republic on the exertion of competences foreseen in the items 10, 11 and 19 of Article 27 of this law, assume juridical power and are countersigned, accordingly, by the Chairman of the Council of Ministers or by the respective minister or the persons equalled with them.

Article 30. When the seat of the President of the Republic is vacant for any reason whatsoever, his competences are exercised temporarily by the chairman of the Presidency of the People's Assembly, excluding those foreseen in the items 5, 6, 7, 9 and 19 of the Article 27 of this law. The election of the President of the Republic takes place no later than 15 days from the day when the seat of the President has remained vacant.

Article 31. The President of the Republic does not respond for the acts committed during his function, the cases of treason to the homeland or violation of this law excluded. In such cases, the question of responsibility might be discussed at the People's Assembly at the request of no less than one-fourth of deputies. The respective decision is adopted by secret ballot with a majority of two thirds of the deputies.

Article 32. The President of the Republic of Albania is general commander of the Armed Forces and chairman of the Council of Defence. The Council of Defence is created to direct, organise and mobilise all the forces and the country's resources for the defence of the homeland. The composition of the Council of Defence is assigned by the People's Assembly on the proposal of the chairman of the Council of Defence.

Chapter III: Supreme Organs of State Administration

Article 33. The Council of Ministers is the highest executive and legislative organ. The Council of Ministers is assigned in the first session of the People's Assembly. The President of the Republic assigns the Chairman of the Council of Ministers and upon the proposal of the latter the ministers too. The composition of the government and its programme are adopted by the People's Assembly with majority of votes, within five days from the date it is submitted. In case he does not get the vote of confidence, the chairman of the Council of Ministers immediately submits his resignation to the president of the Republic, who assigns the new chairman of the Council of Ministers. Before resuming the functions, the Chairman of the Council of Ministers and the ministers swear before the President of the Republic.

Article 34. The deputies enjoy the right to forward at any time a lack of confidence motion towards the Council of Ministers or its separate members. The lack of confidence motion should be signed by at least one tenth of the deputies and can be examined by the People's Assembly only after three days of its presentation. Non-approval by the People's Assembly of a proposal forwarded by the government does not necessarily bring about the compulsory resignation of the government.

Article 35. The Council of Ministers is made of the Chairman, Vice-Chairmen, the ministers and other persons defined by law. Any Albanian citizen residing permanently in the Republic of Albania and enjoying the right to be elected might be in the composition of the Council of Ministers. The members of the Council of Ministers should not have, except for the mandate of the deputy, any other state or professional function and should not take part in leading organisms of economic and trade organisations. The member of the Council of Ministers may leave his seat vacant even when he does not ensure the vote of confidence or when [he] resigns. The Council of Ministers is a collegial organ. Decisions are adopted when approved by the absolute majority of its members. The ministers respond collegially for the acts of the Council of Ministers and individually for acts of their institutions. The composition, attributes and organisation of the Council of Ministers are arranged by law.

Article 36. The Council of Ministers has the following main competences:

(1) Directs the activity for the realisation of the domestic and foreign policy of the state.

(2) Issues the decisions, ordinances and instructions in compliance with the Constitution and laws and on their implementation. They are signed by the Chairman of the Council of Ministers and, when having a normative character, are published in the Official Gazette, excluding separate cases foreseen by law.

(3) Guides and controls the activity of ministries and other central organs of the state administration. Co-ordinates and monitors the activity of local organs of administration, ensuring the compulsory and similar implementation of the laws and acts of the government.

(4) Directs the activity for the fulfillment of the tasks in the field of the country's defence, conform the decisions of the Council of Defence.

(5) Adopts measures on security, the preservation and strengthening of juridical order and of the citizens' rights.

(6) Reaches international agreements, adopts and denounces those that are not subjected to ratification.

(7) Works out economic and social programmes of the country's developments and the synthetic economic indices, the state budget, pursues and controls their implementation, co-ordinates, disciplines and controls the state finances and the monetary and credit system.

(8) Makes the division or unification of the administrative-territorial units.

(9) Adopts measures to ensure the protection of the environment, the suitable working conditions and the protection of the citizens' health.

Article 37. The Council of Ministers invalidates the illegitimate acts of the ministries and other central organs of state administration.

Article 38. The Chairman and the Vice-Chairmen of the Council of Ministers constitute the Presidency of the Council of Ministers. By the decision of the Council of Ministers, the Presidency may be charged to examine and solve various questions under its competences. The Chairman of the Council of Ministers represents the Council of Ministers, presides over its meetings, directs its general activity and responds for it, ensures the unity of political and administrative management of the government, co-ordinating the affairs of the ministries and other central institutions.

Article 39. The ministers and other persons equalled with them, direct the ministries and the other central institutions in certain branches of the respective ministries. The ministers bear responsibility for the activity of respective ministries. The ministers, on questions under their competences, issue orders, regulation and instructions based on the laws and ordinances and decisions of the Council of Ministers and on their implementation. The acts of ministers of normative character are issued in the Official Gazette, special cases foreseen by law excluded.
Article 40. The ministers abrogate unlawful orders and instructions of the subordinate organs, enterprises and institutions.
Article 41. The members of the Council of Ministers respond penally to the violation of this law as well as of other laws related to the exercise of their function. The penal prosecution is approved by the People's Assembly.

Chapter IV: Final Provisions

Article 42. The creation, organisation and activity of the local organs of power, administration, courts and attorney-general are made according to certain regulations with existing legal provisions, excluding those that run contrary to this law. The investigator's office depends administratively on the Minister of Justice.
Article 43. The drafts for amendments to this law might be forwarded by the President of the Republic of Albania, the Council of Ministers or one fourth of all the deputies. The adoption of amendments is done by the People's Assembly with a majority of two-thirds of all the deputies.
Article 44. The provisions of this law operate till the adoption of the Constitution of the Republic of Albania, whose draft will be worked out by the special commission charged by the People's Assembly. The composition of the commission and the schedule of the presentation of the draft constitution is defined by special decision of the People's Assembly.
Article 45. The Constitution of the PSR of Albania, adopted on 28th December 1976, as well as its later amendments, is invalidated.
Article 46. This law enters into force immediately.

Tirana, 29th April 1991
Law No. 7,491

REPUBLIC OF ALBANIA CHARGE OF RIGHTS

(Adopted March 31, 1993)

Law on a Supplement to the Law No. 7491, Dated 29.04.1991—"On Principal Constitutional Provisions"

On the basis of Articles 16 and 23 of the Law "On Principal Constitutional Provisions," on the proposal of the President of the Republic,

The People's Assembly of the Republic of Albania

Considering that, during the fierce and extremely inhuman dictatorship of the Party-State, which lasted for 46 years in Albania, civil, political, economic, social and cultural rights and the very fundamental freedoms of the individual were violated and denied by the means of state terror,

Considering that respect and provision for the unrestricted enjoyment of these rights and freedoms constitutes one of the highest aspirations of the Albanian people and a prerequisite to the provision of liberty, social equality and democratic prosperity of the society,

Decided

To add a separate Chapter to the Law No. 7491, dated 29.04.1991 "On Principal Constitutional Provisions," with the following content:

"Fundamental freedoms and human rights"

The fundamental freedoms and human rights are sanctioned and guaranteed by means of the following provisions:

Article 1. The right to life—The right to life of any individual shall be protected by law. No one shall be deprived of his life, except where a judgment is to be enforced because of an extremely grave crime committed deliberately, where the law provides for the death penalty. The death penalty shall not apply to juveniles under the age of 18 at the time the crime was committed, or to women.

Article 2. Freedom of expression—The freedom of expression may not be violated. Any prior censorship is prohibited. No law may be enacted to restrict the freedom of speech, press or any other mass media, except in those cases where the protection of children's interests or the lives of people are concerned. The right to information may not be denied to anyone. The exercise of freedoms and rights may not be restricted, except in those cases prescribed by law, which constitute necessary means in a democratic society in the interests of national security, territorial integrity, public safety and order, or for the prevention of crime, for the protection of health or morals, the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

Article 3. The abolition of torture—No one shall be subjected to torture, or to degrading or inhuman treatment or punishment.

Article 4. The prohibition of forced labor—No one may be compelled to undertake any forced labor, except for cases where a judgment is enforced, or during military service or any other service deemed necessary in a situation of emergency, or where any natural calamity threatens the life or health of people.

Article 5. An individual's freedom and personal security—An individual's freedom and personal security may not be violated. No one may be taken into custody without sufficient evidence. The detained person shall be given an immediate explanation concerning the reasons for the detention and, within a reasonable time, shall appear before a judge. No one may be kept in custody for more than 48 hours. Every person

kept in custody or under arrest shall be given the explanation that he is under no obligation to submit a declaration and that he has the immediate right to communicate with a lawyer. The arrested person shall have the right of appeal against his arrest, in a court.

Article 6. No punishment without a law—No one shall be accused of or found guilty of an offense which was not punishable by law at the time the offense was committed. No sentence graver than the one provided for by law at the time the offense was committed may be imposed. The favorable criminal law shall have a retroactive effect.

Article 7. Presumption of innocence—Everyone shall be presumed innocent until otherwise proved and a final judgment delivered.

Article 8. Criminal procedural guarantees—No one during criminal proceedings, shall be deprived of the right to.

(a) be informed immediately and in detail about the nature of the charge he is accused of;

(b) have sufficient time and facilities to prepare for his own defense;

(c) have the aid, free of charge, of a translator in those cases where the accused cannot speak or understand Albanian;

(d) be defended by himself or by a lawyer that he has chosen, and be able to speak freely and privately with the latter, and be provided with legal aid by any lawyer, where the accused does not possess sufficient means;

(e) question witnesses and request the appearance of further witnesses, experts and other persons who can clarify the matter by giving evidence.

Article 9. No enforcement to confess one's guilt—No one may be forced to give evidence against himself or to confess his guilt.

Article 10. Invalidity of unlawful evidence—No one may be found guilty on evidence collected and produced unlawfully.

Article 11. The right to speak before a trial—No one may be denied the right to speech prior to being sentenced.

Article 12. Prohibition to judge a single offense twice—No one may be judged or sentenced more than once for a single offense, except when a higher court rules that the case shall be judged again.

Article 13. The right to appeal—Everyone shall have the right of appeal against a judgment, to a higher court established by law.

Article 14. The right to rehabilitation and compensation—Anyone being punished due to a misjudgment or due to encroachment by an unlawful administrative act shall have the right to rehabilitation and compensation in compliance with the law. Anyone suffering from damage due to the act of another shall have the right to be compensated in accordance with the law. No prisoner may be denied humane treatment or moral rehabilitation.

Article 15. Prohibition to encroach on the private life and dignity of the individual—The private life and dignity of an individual may not be encroached. Information concerning the private life of an individual may be collected only with his permission, or where this is indispensable in carrying out investigations for an offense, or by the approval of a competent government body, assigned by law, for reasons of national security. The

collection, handling and final use of personal data, as well as the supervision and secrecy thereof are governed by the law. No one may be denied the right to know the content of the information collected about him, except where the interests of criminal proceedings or national security are involved. It is prohibited to use personal data for purposes other than those for which they were collected.

Article 16. Inviolability of dwelling and individual—The dwelling is inviolable. Entry into a house without permission of the dweller is possible only by a court decision in cases prescribed by law, or where this is necessary to avoid any imminent danger to the life or health of the dwellers, to protect property, or when a crime is being, or has just been, committed. No one may be subjected to a personal search, except in cases of entering or leaving the territory of the state, or in cases where public safety is imminently threatened.

Article 17. Privacy of correspondence—The privacy of correspondence or of any other means of private communication may not be encroached, except for a judgment in the interests of criminal proceedings or by the approval of a competent governmental body, assigned by law, in cases where it is considered indispensable for reasons of national security.

Article 18. Freedom of conscience and religion—The freedom of thought, conscience and religion may not be violated. Everyone may freely change his religion or beliefs and may manifest them either alone or in community with others and in public or in private life in worship, teaching, practice and observance.

Article 19. The right to elect and to be elected—Every citizen above the age of 18 has the right to elect and be elected. Those citizens who have forfeited their legal and civil capacity are excluded from this right. Persons arrested and those who are serving a sentence shall have the right to elect only. The vote is personal, equal and secret.

Article 20. The right to organization—No one may be denied the right to collective organization for any lawful purpose. Restrictions on civil servants exercising such a right may be prescribed by law.

Article 21. The right to assembly—Peaceful assembly, without arms, may not be restricted. Assemblies in squares and public passages may be organized with the prior permission of competent bodies, who may refuse permission only when there is a sufficient ground to believe that security and public order are seriously threatened.

Article 22. The right to movement—Everyone has the right to choose his dwelling and to freely move around the territory of the country, except in cases where the law provides restrictions, for reasons of health and public security. Everyone shall be free to travel abroad and return.

Article 23. Prohibition of deportation and extradition—No Albanian citizen may be deported from the territory of the state. Extradition of a citizen may be allowed only where it is provided for explicitly in international Conventions to which the Republic of Albania is a party. Mass deportations of foreigners is prohibited. Foreign individuals may be deported in cases prescribed by law.

Article 24. Citizenship—No one may be deprived of his Albanian citizenship without his consent or of the right to renounce his citizenship. The terms for gaining and giving

up citizenship are governed by law. All Albanian citizens residing abroad enjoy the protection of the state.

Article 25. Equality before the law—All persons are equal by law before the law. No one may be discriminated against on account of sex, race, ethnic belonging, language, religion, economic and financial, educational and social conditions, political opinions, parental belonging, or any other personal circumstances.

Article 26. The rights of minorities—Individuals belonging to minorities shall enjoy, with no discrimination and in equality before the law, the fundamental human rights and freedoms. They may freely express, preserve and develop their own ethnic, cultural, religious, and linguistic identity, teach and be taught in their mother tongue, and associate in organizations and societies to protect their interests and identity. Nationality shall be determined on the basis of accepted international norms.

Article 27. The right to private property and inheritance—No one may be denied the right to own private property, either alone or jointly with others, or the right of inheritance. The acquisition, enjoyment and transfer of property, and the right to inheritance are governed by law. No one may be expropriated, except in the public interest and against full compensation.

Article 28. The right to employment—Everyone shall have the right to gain a living by lawful employment of his own choice and accord. Everyone shall be free to choose his profession, working place and systems of professional training.

Article 29. Trade union freedom—Employees shall have the right to freely associate in trade unions to protect their interests in matters concerning labor and social insurance.

Article 30. The right to go on strike—The right to strike by employees, when they intend to ameliorate their working conditions, to demand higher wages or any other profit obtained through work may not be restricted. The terms and rules for exercising such a right and the guarantees to provide the necessary services for society, are laid down by law.

Article 31. The right to insurance and social assistance—Everyone reaching the retirement age or suffering from a disability to work shall have the right to social insurance, in conformity with a system laid down by law. Employees becoming unemployed for reasons beyond their will and control shall have the right to compensation according to the terms prescribed by law.

Article 32. Marriage and the family—Everyone of marriageable age shall have the right to freely choose his or her partner and found a family. Marriage and the family shall enjoy special protection by the state. Contracting and dissolving of a marriage shall be governed by law.

Article 33. Protection of children and women—Children, juveniles, pregnant women and young mothers shall enjoy the right to special protection provided by the law. Children born out of wedlock, shall have equal right as children born within wedlock.

Article 34. Health care by the state—Everyone shall have the equal right to health care by the state. Compulsory medications shall be administered only for the benefit of the patient, in those cases envisaged by law. No one shall be subjected to a medical or scientific experiment without his consent.

Article 35. The right to education—Everyone shall have the right to an education free of charge which lasts no less than 8 years. General secondary education shall be open to everyone. Secondary and higher vocational training shall be conditioned only on professional criteria. Pupils and students shall also have the right to be educated in private schools. University autonomy shall be guaranteed.

Article 36. The freedom of creation and intellectual property rights—Everyone shall enjoy the freedom of creation in science, technique, literature and the arts. Copyright shall be protected by law.

Article 37. The right to petition—Everyone, alone or jointly with others, shall have the right to address requests, claims, or suggestions to competent governmental bodies.

Article 38. Fair legal process—The freedom, the property or the rights acknowledged by law may not be encroached without a fair legal process.

Article 39. Judicial restitution of a right—No one, suffering encroachment of a right acknowledged by this Constitutional Law, may be denied judicial restitution of that right.

Article 40. The guarantee of a fair trial—No one may be denied the right to a fair, public and quick trial by a competent, impartial and independent court. The presence of the public and mass media during the trial may be restricted when the interests of the public order or morality, national security, the private life of the parties in court or justice demand it.

Article 41. Temporary restriction of rights—The exercising of some specific rights may be temporarily restricted by law in a situation of national emergency or war, with the exclusion of the rights provided for in Article 1 (right to life), 2 (freedom of expression), 3 (abolition of torture), 9 (no enforcement to confess one's guilt), 18 (freedom of conscience and religion), 25 (equality before the law), 39 (judicial restitution of a right), and 40 (guarantee of a fair trial).

Article 42. The present law becomes effective 25 days after its publication in the Official Gazette—

Tirana, 31 March 1993
No. of the Law. 506
Speaker of the Parliament
Pjeter Arbnori

CONSTITUTION OF THE REPUBLIC OF BELARUS

(Adopted March 15, 1994)

We, the people of the Republic of Belarus, proceeding from responsibility for the present and future of Belarus, recognizing ourselves to be a full subject of the world community and confirming our commitment to values common to all mankind, taking as a basis our inalienable right to self-determination, relying on the age-old history of the development of Belarusian statehood, endeavoring firmly to establish the rights and liberties of each citizen of the Republic of Belarus, and wishing to ensure civil harmony and the permanent foundations of the power of the people and a state based on the rule of law, adopt this constitution—the basic law of the Republic of Belarus.

Section I. Principles of the Constitutional System

Article 1. The Republic of Belarus is a unitary democratic, social state based on the rule of law. The Republic of Belarus is supreme and possesses the fullness of power on its territory and exercises domestic and foreign policy independently. The Republic of Belarus defends its independence and territorial integrity and the constitutional system and ensures legality and law and order.

Article 2. Man is the highest value of society and the state. The state is responsible to the citizen for the creation of the conditions for the free and worthy development of the personality. The citizen is responsible to the state for the unswerving discharge of the obligations entrusted to him by the constitution.

Article 3. The sole source of state power in the Republic of Belarus is the people. The people exercise their power directly and via representative authorities in the forms and within the limits determined by the constitution. All actions in respect to the achievement of state power by forcible methods and also by way of some violation of the laws of the Republic of Belarus shall be punished in accordance with the law.

Article 4. Democracy in the Republic of Belarus shall be exercised on the basis of a diversity of political institutions, ideologies and opinions. The ideology of political parties, religious or other public associations, or social groups may not be established as obligatory for the citizens.

Article 5. Political parties and other public associations shall, operating within the framework of the constitution and the laws of the Republic of Belarus, contribute to

the ascertainment and expression of the political will of the citizens and shall participate in elections. Political parties and other public associations are entitled to avail themselves of the official news media in the procedure determined by the law. The creation and the activity of political parties and, equally, other public associations whose purpose is a forcible change in the constitutional system or which engage in propaganda of war or national, religious or racial hatred are prohibited.

Article 6. The state takes as a basis the principle of the separation of powers: legislative, executive and judicial. State authorities are within their competence independent: they interact among themselves and check and balance one another.

Article 7. The state and all its authorities and officials shall be bound by the law and shall operate within the limits of the constitution and the laws adopted in accordance with it. Legal enactments or individual provisions thereof deemed in the procedure established by law to conflict with the provisions of the constitution shall not be legally valid. Enforceable enactments of state authorities shall be published or brought to general notice in some way specified by the law.

Article 8. The Republic of Belarus recognizes the priority of the generally recognized principles of international law and shall ensure that legislation correspond to them. The conclusion of international treaties that conflict with the constitution is prohibited.

Article 9. The territory of the Republic of Belarus is the natural condition of the existence and spatial limit of the self-determination of the people and the basis of their well-being and the sovereignty of the Republic of Belarus. The territory of Belarus is unified and inalienable. The territory is divided into oblasts, *rayons,* cities and other administrative-territorial units. The administrative-territorial division of the state shall be determined by law.

Article 10. A citizen of the Republic of Belarus shall be guaranteed the protection and patronage of the state both on the territory of Belarus and outside. No one may be deprived of citizenship of the Republic of Belarus or the right to change his citizenship. A citizen of the Republic of Belarus may not be extradited to a foreign state unless otherwise specified by international treaties of the Republic of Belarus. Citizenship shall be acquired and lost in accordance with the law.

Article 11. Foreign citizens and stateless persons on the territory of Belarus shall enjoy rights and liberties and discharge obligations on a par with citizens of the Republic of Belarus, unless otherwise determined by the constitution, laws and international treaties.

Article 12. The Republic of Belarus may grant asylum to persons persecuted in other states for political or religious beliefs or for their national affiliation.

Article 13. The state shall accord everyone equal rights for the exercise of economic and other activity, except for that prohibited by law, and guarantee equal protection and equal conditions for the development of all forms of ownership. The state shall regulate economic activity in the interests of man and society. The law may determine facilities which are the property only of the state and also enshrine the exclusive right of the state to undertake particular types of activity.

Article 14. The state shall regulate relations between social, national and other communities on the basis of the principles of equality before the law and respect for their rights and interests.

Article 15. The state shall be responsible for preservation of the historical and cultural heritage and the free development of the cultures of all national communities which live in the Republic of Belarus.

Article 16. All religions and creeds are equal before the law. The establishment of some advantages or restrictions in respect to one religion or creed in relation to others shall not be permitted. The activity of religious organizations and their bodies and representatives which is aimed against the sovereignty of the Republic of Belarus and its constitutional system and civil harmony or which entails a violation of citizens' rights and liberties is prohibited. Relations of the state and religious denominations shall be regulated by law.

Article 17. The official language of the Republic of Belarus is Belarusian. The Republic of Belarus shall provide for the right of unrestricted use of Russian as the language of interethnic communication.

Article 18. The Republic of Belarus shall proceed in its foreign policy from the principles of states' equality, the nonuse or threat of force, the sanctity of borders, the peaceful settlement of disputes, noninterference in internal affairs and other generally recognized principles and rules of international law. The Republic of Belarus aims to make its territory a nuclear-free zone, and the state, neutral.

Article 19. The symbols of the Republic of Belarus as a sovereign state are its national flag, national coat of arms and national anthem.

Article 20. The capital of the Republic of Belarus is the city of Minsk. The status of the city of Minsk shall be determined by law.

Section II. The Individual, Society and the State

Article 21. Assurance of the rights and liberties of the citizens of the Republic of Belarus is the highest purpose of the state. The state guarantees the rights and liberties of the citizens of Belarus enshrined in the constitution and the laws and specified by the international commitments of the state.

Article 22. All are equal before the law and are entitled without any discrimination to equal protection of rights and legitimate interests.

Article 23. Qualification of the rights and liberties of the individual shall be permitted only in the instances specified by law in the interests of national security, public order and the defense of the morals and health of the population, and the rights and liberties of other persons. No one may enjoy advantages or privileges that conflict with the law.

Article 24. Everyone has the right to life. The state shall protect the life of the individual against all unlawful endangerments. Until it is abolished, the death penalty may be applied in accordance with the law as an exceptional measure of punishment for particularly serious crimes and only in accordance with the verdict of a court of law.

Article 25. The state ensures the freedom, inviolability and dignity of the individual. The restriction or deprivation of personal liberty is possible in the instances and in the procedure established by law. A person who has been taken into custody shall be entitled to judicial verification of the legality of his detention or arrest. No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment or be subjected without his consent to medical or other experiments.

Article 26. No one may be found guilty of a crime unless his guilt has been proven in the procedure specified by law and established by the verdict of a court which has acquired the force of law. A defendant shall not be required to prove his innocence.

Article 27. No one should be compelled to testify or provide explanations against himself, members of his family, or his close relatives. Evidence obtained in violation of the law is legally invalid.

Article 28. Everyone has the right to protection against unlawful interference in his private life, against encroachment on the secrecy of his correspondence and telephone and other communications, and against his honor and dignity included.

Article 29. Inviolability of the dwelling and other legitimate possessions of the citizens is guaranteed. No one has the right without just cause to enter into the dwelling or other lawful possession of the citizen against his wishes.

Article 30. Citizens of the Republic of Belarus have the right to move without restriction and choose their place of residence within the Republic of Belarus, to leave it and to return to it without hindrance.

Article 31. Everyone is entitled to independently determine his attitude toward religion, confess individually or together with others any religion or to confess none, to express and disseminate beliefs connected with his attitude toward religion, and to participate in the celebration of religious cults, rituals and ceremonies.

Article 32. Marriage and the family, and motherhood, fatherhood and childhood are under the protection of the state. Women and men shall upon reaching the age of consent have the right on a voluntary basis to enter into marriage and start a family. Husband and wife are equal in family relationships. Parents or persons in loco parentis are entitled and are required to raise the children and display concern for their health, development and tuition. A child must not be subjected to cruel treatment or humiliation or be enlisted in work which could be harmful to its physical, mental or moral development. Children are required to display concern for their parents and also for the persons substituting for them and to render them assistance.

Article 33. Everyone is guaranteed freedom of opinions and beliefs and their free expression. No one may be forced to express his beliefs or to deny them. Monopolization of the news media by the state, public associations or individual citizens and also censorship are not allowed.

Article 34. Citizens of the Republic of Belarus are guaranteed the right to obtain, store and disseminate full, reliable and timely information on the activity of state authorities and public associations, and on political, economic and international life, and on the state of the environment. State authorities, public associations and officials are re-

quired to afford a citizen of the Republic of Belarus an opportunity to familiarize himself with material affecting his rights and legitimate interests.

Article 35. Freedom of assembly, meetings, street marches, demonstrations and picketing not violating law and order or the rights of other citizens of the Republic of Belarus are guaranteed by the state. The procedure of realization of the said activities shall be determined by law.

Article 36. Everyone has the right to freedom of association. Judges, employees of the Public Procurator's Office and staff of the internal affairs authorities, the Control Chamber of the Republic of Belarus and the security authorities and servicemen may not be members of political parties or other public associations pursuing political ends.

Article 37. Citizens of the Republic of Belarus are entitled to participate in the solution of matters of state both directly and via freely elected representatives. The direct participation of citizens in the administration of the affairs of society and the state shall be ensured by the holding of referenda and the discussion of draft laws and matters of republic and local significance and in other ways determined by law.

Article 38. Citizens of the Republic of Belarus have the right to vote without restriction and to run for state office on the basis of universal, equal and direct suffrage by ballot.

Article 39. Citizens of the Republic of Belarus have, in accordance with their capabilities and professional training, the right to equal access to all offices of state authorities.

Article 40. Everyone has the right to send personal or collective appeals to state authorities. State authorities and also officials are required to examine an appeal and provide a response in point of substance within the time frame specified by law. A refusal to consider an appeal which has been submitted must be justified in writing.

Article 41. Citizens of the Republic of Belarus are guaranteed the right to labor as the worthiest mode of man's self-assertion, that is, the right to choice of profession and type of occupation, and work in accordance with their vocation, capabilities, education and vocational training, and with regard to social requirements and also to healthy and safe working conditions. The state shall create the conditions for full employment. In the event of a person not being employed for reasons which are beyond his control, he shall be guaranteed instruction in new specialties and an upgrading of his qualifications with regard to social requirements and also unemployment benefits in accordance with the law. Citizens have the right to defense of their economic and social interests, including the right to associate in trade unions and to conclude collective contracts (agreements) and the right to strike. Forced labor, other than work or service determined by the sentence of a court or in accordance with the act governing a state of emergency or martial law, is prohibited.

Article 42. Persons working for wages are entitled to compensation for the work they have done in accordance with its quantity, quality and social significance, but not less than the minimum established by the state. Women and men and adults and minors are entitled to equal compensation for work of equal value.

Article 43. Working people have the right to recreation. For those working for wages

this right shall be secured by the establishment of a work week of not more than 40 hours, shorter working hours at nighttime and the allocation of paid annual leave and days of weekly recreation.

Article 44. The state guarantees everyone the right of property. A proprietor has the right to possess, enjoy and dispose of assets both individually and jointly with other persons. The inviolability of property and the right to inherit it are protected by law. The compulsory alienation of assets is permitted only by reason of public need, with observance of the conditions and the procedure determined by law and with timely and full compensation for the value of the alienated assets, and also in accordance with the verdict of a court of law. Exercise of the right of ownership must not cause harm to the environment or historical and cultural values or infringe the rights of other persons or their rights protected by law.

Article 45. Citizens of the Republic of Belarus are guaranteed the right to health care, including free treatment in state health-care institutions. The right of the citizens of the Republic of Belarus to health care shall be secured also by the development of physical culture and sport, measures to improve the environment, the possibility of the use of health-and-fitness establishments and an improvement in occupational safety.

Article 46. Everyone is entitled to pleasant surroundings and to compensation for damage caused by violations of this right.

Article 47. Citizens of the Republic of Belarus are guaranteed the right to social security in old age and in the event of illness, disability, loss of fitness for work and loss of the breadwinner, and in other instances specified by law. The state shall display particular concern for persons who have lost their health in the defense of state and public interests.

Article 48. Citizens of the Republic of Belarus have the right to habitation. This right shall be secured by the development of state, public and private housing, and assistance to citizens in the purchase of housing. No one may be deprived of housing arbitrarily.

Article 49. Everyone has the right to education. Accessible and free general, secondary and vocational-technical education is guaranteed. Secondary specialized and higher education shall be accessible to all in accordance with the capabilities of each. Everyone may on a competitive basis obtain the corresponding education in state educated institutions free of charge.

Article 50. Everyone is entitled to preserve his national affiliation, as, equally, no one may be compelled to determine or indicate national affiliation. Insults against national dignity shall be prosecuted according to the law. Everyone has the right to use his native language and choose the language of communication. The state guarantees, in accordance with the law, freedom of choice of language of education and tuition.

Article 51. Everyone has the right to participate in cultural life. This right shall be secured by the general accessibility of the values of native and world culture in state and public collections and by the development of the network of cultural and educational institutions. Freedom of artistic, scientific and technical creativity and teaching is guaranteed. Intellectual property is protected by law.

Article 52. Everyone on the territory of the Republic of Belarus is required to observe its constitution and laws, and to respect national traditions.

Article 53. Everyone is required to respect the dignity, rights, liberties and legitimate interests of other persons.

Article 54. Everyone is required to preserve the historical and cultural heritage and other cultural values.

Article 55. Protection of the environment is the duty of everyone.

Article 56. Citizens of the Republic of Belarus are required to participate in the funding of government spending by way of the payment of state taxes and dues and other payments.

Article 57. Defense of the Republic of Belarus is the obligation and sacred duty of the citizen of the Republic of Belarus. The procedure of military service and the grounds and conditions for exemption from military service or its replacement by alternative service shall be determined by law.

Article 58. No one may be constrained to perform duties not specified by the constitution of the Republic of Belarus and its laws or to deny his rights.

Article 59. The state is required to adopt all measures accessible to it for the creation of the internal and international order necessary for the realization in full of rights and liberties of the citizens of the Republic of Belarus specified by the constitution.

Article 60. State authorities, officials and other persons to whom the exercise of official functions has been entrusted are required to adopt within their jurisdiction the necessary measures for realization and protection of the rights and liberties of the individual. These authorities and persons shall be held liable for actions violating the rights and liberties of the individual.

Article 61. Everyone is guaranteed protection of his rights and liberties by a competent, independent and impartial court of law in the time frame specified by law. For the purpose of defense of their rights, liberties, honor and dignity the citizens shall be entitled to seek in legal form both redress for property damage and material compensation for moral damage.

Article 62. Everyone has the right to legal aid for the realization and defense of rights and liberties, including the right to use at any moment the assistance of lawyers and other of one's representatives in court, other state authorities and bodies of local administration, at enterprises and in establishments, organizations and public associations, and in relations with officials and citizens. In the instances specified by law, legal aid shall be rendered at the expense of public funds. Opposition to the rendering of legal aid in the Republic of Belarus is prohibited.

Article 63. The realization of the rights and liberties of the individual specified by this constitution may be suspended only under the conditions of a state of emergency or martial law in the procedure and within the limits determined by the constitution and the law. The rights specified in Article 24, sentence 3 of Article 25, and Articles 26 and 31 of the constitution may not be qualified at the time of the implementation of special measures in a period of a state of emergency.

Section III. Electoral System, Referendum

Chapter 1: Electoral System

Article 64. The elections of deputies and other persons elected to state office by the people are universal: citizens of the Republic of Belarus who have reached the age of 18 are eligible to vote. Citizens deemed incompetent by a court of law and persons held in accordance with the verdict of a court in places of confinement shall not participate in elections. Persons in respect to whom preventive punishment—custody—has in the procedure established by criminal-procedure legislation been chosen shall not participate in the ballot. Any direct or indirect qualification of the citizens' suffrage in other instances is impermissible and punishable according to the law.

Article 65. The age qualification of the deputies and other persons elected to state office shall be determined by the corresponding laws, unless otherwise specified by the constitution.

Article 66. Elections are free: the voter decides personally whether to take part in elections and for whom to vote. Elections shall be prepared and held openly and publicly.

Article 67. Elections shall be equal: the voters shall have an equal number of votes. The number of voters in each constituency should be roughly equal. Candidates running for public office shall participate in elections on an equal basis.

Article 68. Elections are direct: the deputies are elected by the citizens directly.

Article 69. The elections shall be conducted by ballot: control of the expression of the electorate's wishes in the course of the ballot is prohibited.

Article 70. Public associations, the work force and the citizens have the right to nominate candidates for deputy in accordance with the law.

Article 71. Expenditure on the preparation and the holding of elections shall be borne by the state within the limits of the funds allocated for this purpose.

Article 72. Election commissions shall provide for the holding of elections. The procedure of the holding of elections shall be determined by the laws of the Republic of Belarus. Elections shall not be held in a period of a state of emergency or martial law.

Chapter 2: Referendum (National Ballot)

Article 73. Republic and local referenda may be conducted for the solution of most important questions of state and public life.

Article 74. Republic referenda shall be scheduled by the Supreme Soviet of the Republic of Belarus in accordance with a proposal of the president of the Republic of Belarus or no fewer than 450,000 citizens eligible to vote. No more than 30 days following the submittal for its consideration, in accordance with the law, of the proposals of the president or the citizens concerning the holding of a referendum, the Supreme Soviet shall be required to schedule a date for the holding of a republican referendum. The question of the holding of a republican referendum may also be

considered by the Supreme Soviet on the initiative of no fewer than 70 deputies of the Supreme Soviet of the Republic of Belarus.

Article 75. Local referendums shall be scheduled by the corresponding local representative authorities on their own initiative or in accordance with the proposal of not less than 10 percent of citizens eligible to vote and resident on the corresponding territory.

Article 76. The referendums shall be conducted by way of general, free and equal ballot. Citizens of the Republic of Belarus eligible to vote shall participate in referendums.

Article 77. The decisions adopted by referendum may be cancelled or revised only by way of referendum, unless otherwise determined by the referendum.

Article 78. The procedure of the realization of republican and local referendums and also the list of questions that may not be put to a referendum shall be determined by the law of the Republic of Belarus.

Section IV. Legislature, Executive and Judiciary

Chapter 3: Supreme Soviet of the Republic of Belarus

Article 79. The Supreme Soviet of the Republic of Belarus is the highest representative permanent and sole legislative body of state power of the Republic of Belarus.

Article 80. The Supreme Soviet shall consist of 260 deputies elected by the citizens of the Republic of Belarus. Any citizen of the Republic of Belarus who is eligible to vote and who has attained to the age of 21 may be a deputy of the Supreme Soviet.

Article 81. The term of the Supreme Soviet shall be five years. The powers of the Supreme Soviet may be terminated early in accordance with a decree of the Supreme Soviet adopted by a majority of no less than two-thirds of the elected deputies. Elections of a new Supreme Soviet shall be scheduled no later than three months prior to the completion of the term of the Supreme Soviet.

Article 82. The first sitting of the Supreme Soviet shall be convened by the Central Commission of the Republic of Belarus for Elections and Republican Referendums no later than 30 days after the elections.

Article 83. The Supreme Soviet of the Republic of Belarus shall:

(1) schedule republican referendums;

(2) adopt and revise the constitution;

(3) adopt laws and decrees and exercise supervision of their execution;

(4) provide an interpretation of the constitution and the laws;

(5) schedule elections of deputies of the Supreme Soviet and the local soviets of deputies; Presidential elections;

(6) form the Central Commission for Elections and Republican Referendums;

(7) elect the Constitutional Court of the Republic of Belarus, the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus, the procurator-general of the Republic of Belarus, the chairman and council of the Control Chamber of the Republic of Belarus, and the chairman and members of the board of the National Bank of the Republic of Belarus;

(8) determine the procedure of the solution of questions of the administrative-territorial arrangement of the state;

(9) determine the guidelines of the domestic and foreign policy of the Republic of Belarus;

(10) confirm the republican budget, the report on its administration and the allowances from all-state taxes and revenue for local budgets;

(11) establish republican taxes and charges and exercise supervision of money issue;

(12) ratify and denounce international treaties of the Republic of Belarus;

(13) adopt amnesty decisions;

(14) determine military policy;

(15) declare war and conclude peace;

(16) institute government awards and class ranks and titles of the Republic of Belarus;

(17) adopt decrees on the dissolution of local soviets of deputies and schedule new elections in the event of their systematic or flagrant violation of the requirements of legislation;

(18) rescind directives of the chairman of the Supreme Soviet of the Republic of Belarus in instances where they conflict with the laws and decrees of the Supreme Soviet.

The Supreme Soviet may decide other questions in accordance with the constitution.

Article 84. The deputies shall vote at sittings of the Supreme Soviet in person. Laws and decrees of the Supreme Soviet shall be considered adopted provided that a majority of elected deputies have voted for them, unless otherwise specified by the constitution. Adopted laws shall within 10 days' time following adoption be forwarded for the president's signature.

Article 85. The Supreme Soviet shall elect from the ranks of the deputies of the Supreme Soviet a chairman of the Supreme Soviet, a first deputy chairman of the Supreme Soviet and deputy chairmen of the Supreme Soviet.

Article 86. The chairman of the Supreme Soviet shall be elected by ballot. He shall be accountable to the Supreme Soviet.

Article 87. The chairman of the Supreme Soviet of the Republic of Belarus shall:

(1) exercise general leadership of the preparation of questions to be considered by the Supreme Soviet;

(2) chair sittings of the Supreme Soviet;

(3) represent the Supreme Soviet in relations with bodies and organizations within the country and abroad;

(4) sign decrees adopted by the Supreme Soviet;

(5) introduce to the Supreme Soviet the candidates for the office of first deputy chairman and deputy chairmen of the Supreme Soviet, procurator-general and chairman of the Control Chamber;

(6) direct the work of the Supreme Soviet bureaucracy.

The chairman of the Supreme Soviet issues directives. The first deputy chairman and the deputy chairmen of the Supreme Soviet of the Republic of Belarus shall perform on behalf of the chairman of the Supreme Soviet certain of his duties and substitute for the chairman of the Supreme Soviet in the event of his being absent or it not being possible for him to perform certain of his duties.

Article 88. The Supreme Soviet shall elect from the ranks of its deputies standing commissions and other bodies for bill-drafting work, the preliminary consideration and preparation of questions within the jurisdiction of the Supreme Soviet, and the supervision of execution of the laws. If necessary, the Supreme Soviet may create investigative, auditing and other temporary commissions.

Article 89. A Presidium of the Supreme Soviet of the Republic of Belarus shall be created for organization of the business of the Supreme Soviet. The Presidium of the Supreme Soviet shall be composed of the chairman of the Supreme Soviet, the first deputy chairman of the Supreme Soviet, the deputy chairmen of the Supreme Soviet and deputies in the procedure specified by the standing orders of the Supreme Soviet. The Supreme Soviet Presidium shall be headed by the chairman of the Supreme Soviet.

Article 90. The right of legislative initiative in the Supreme Soviet of the Republic of Belarus shall belong to deputies of the Supreme Soviet, the standing commissions of the Supreme Soviet, the president, the Supreme Court, the Supreme Economic Court, the procurator-general, the Control Chamber and the National Bank, and also citizens eligible to vote in a number of no fewer than 50,000.

Article 91. The powers of the Supreme Soviet shall be retained until the opening of the first sitting of the Supreme Soviet of the new convocation.

Article 92. A deputy of the Supreme Soviet shall exercise his authority in the Supreme Soviet on a professional basis or, as he desires, without a break from industrial or office activity. The president, members of the Cabinet of Ministers and judges, and also other persons appointed to office by the president or following consultation with him may not be deputies of the Supreme Soviet.

Article 93. A deputy of the Supreme Soviet shall not be held legally liable for his activity in the Supreme Soviet exercised in accordance with the constitution, both in the period of execution of his deputy's authority and after the completion of his term. A deputy of the Supreme Soviet may not be arraigned on criminal charges, be detained, or otherwise deprived of personal liberty without the consent of the Supreme Soviet, except in instances of arrest at the scene of a crime. Criminal proceedings against a deputy of the Supreme Soviet may be instituted by the prosecutor general with the consent of the Supreme Soviet, and in the period between sessions, with the consent of the Supreme Soviet Presidium.

Article 94. The procedure of the activity of the Supreme Soviet and its bodies and deputies shall be determined by the standing orders of the Supreme Soviet, which shall be adopted by the Supreme Soviet and signed by its chairman, and also other legislative instruments of the Republic of Belarus.

Chapter 4: President of the Republic of Belarus

Article 95. The president of the Republic of Belarus is the head of state and the executive.

Article 96. A citizen of the Republic of Belarus who is at least 35 years of age, is eligible to vote and who has been resident in the Republic of Belarus for at least 10 years may be elected president.

Article 97. The president is elected directly by the people of the Republic of Belarus. The president's term is five years. One and the same person may be president for no more than two terms. Candidates for the office of president shall be nominated by no fewer than 70 deputies of the Supreme Soviet and by citizens of the Republic of Belarus, with no fewer than 100,000 voters' signatures. Elections for president shall be scheduled by the Supreme Soviet no later than five months and held no later than two months following the expiration of the term of the previous president. If the office of president falls vacant, elections shall be held no sooner than 30 days and no later than 70 days from the time the office fell vacant.

Article 98. It shall be considered that elections have been held if more than half the citizens of the Republic of Belarus on the electoral roll have taken part in the ballot. The president shall be deemed elected if more than half the citizens of the Republic of Belarus who took part in the ballot voted for him. If no candidate amasses the requisite number of votes, a second round of voting for the two candidates who obtained the largest number of votes shall be conducted within two weeks. The presidential candidate who obtained in the runoff more than half the votes of those who took part in the ballot shall be considered elected. The procedure of presidential elections shall be determined by law of the Republic of Belarus.

Article 99. The president assumes office after he has taken the oath, which reads as follows: "Assuming the office of president of the Republic of Belarus, I solemnly swear to serve the people of the Republic of Belarus, observe the constitution and the laws of the Republic of Belarus, and conscientiously discharge the high obligations entrusted to me." The oath shall be administered in a ceremonial atmosphere at a special sitting of the Supreme Soviet of the Republic of Belarus no later than two months from the day the president is elected. The term of the previous president ends as of the moment the newly elected president takes the oath.

Article 100. The president of the Republic of Belarus shall:

(1) adopt measures to guard the sovereignty, national security and territorial integrity of the Republic of Belarus, and ensure political and economic stability, and the observance of the rights and liberties of citizens;

(2) direct the system of bodies of the executive and ensure their interaction with the representative authorities;

(3) create and abolish ministries, state committees and other central bodies of administration of the Republic of Belarus;

(4) with the consent of the Supreme Soviet appoint and dismiss the premier and his deputies, the ministers of foreign affairs, finance, defense and internal affairs and the chairman of the Committee for State Security; appoint and dismiss other members of the cabinet; accept the resignation of the persons specified in this clause;

(5) introduce to the Supreme Soviet the candidates for election to the offices of chairman of the Constitutional Court, chairman of the Supreme Court, chairman of the Supreme Economic Court and chairman of the board of the National Bank;

(6) annually present to the Supreme Soviet reports on the state of the nation and, on his own initiative or in accordance with a proposal of the Supreme Soviet, inform the Su-

preme Soviet of the Republic of Belarus as to the realization of the domestic and foreign policy of the Republic of Belarus;

(7) deliver addresses to the people of the Republic of Belarus and the Supreme Soviet;

(8) report to the Supreme Soviet on the program of activity of the Cabinet of Ministers;

(9) be entitled to participate in the business of the Supreme Soviet and its bodies and to present to them at any time a speech or report;

(10) appoint judges of the Republic of Belarus, other than those whose election is within the jurisdiction of the Supreme Soviet;

(11) appoint other officials, whose offices are determined in accordance with the law, unless otherwise specified by the constitution;

(12) decide questions of admittance to citizenship of the Republic of Belarus and its termination and the granting of asylum;

(13) confer government awards and bestow class ranks and titles;

(14) pardon convicted citizens;

(15) represent the state in relations with other countries and international organizations;

(16) conduct negotiations and sign international treaties, and appoint and recall diplomatic representatives of the Republic of Belarus in foreign states and at international organizations;

(17) receive the credentials and letters of recall of diplomatic representatives of foreign states accredited to him;

(18) in the event of a natural disaster or catastrophe, and also unrest accompanied by violence or the threat of violence on the part of a group of persons and organizations, as a result of which a danger to people's life and health and the territorial integrity and existence of the state has arisen, introduce on the territory of the Republic of Belarus or in particular localities thereof a state of emergency with the submittal within three days' time of the adopted decision for approval by the Supreme Soviet;

(19) in the instances specified by law, be entitled to postpone a strike or suspend it for a period of no more than two months;

(20) sign laws and be entitled no later than 10 days following the receipt of a law to return it with his objections to the Supreme Soviet for further discussion and a vote. If by a majority of no less than two-thirds of the elected deputies the Supreme Soviet upholds the decision it adopted earlier, the president shall be required to sign the law within three days' time; a law that is not returned within the said time frame shall be considered signed;

(21) be entitled to rescind enactments of bodies of the executive under his jurisdiction;

(22) suspend decisions of the local soviets of deputies in the event of their failing to correspond to the law;

(23) head the Security Council of the Republic of Belarus;

(24) be the commander-in-chief of the armed forces of the Republic of Belarus;

(25) introduce martial law on the territory of the Republic of Belarus in the event of a threat of war or attack and announce full or partial mobilization;

(26) exercise other authority entrusted to him by the constitution and the laws.

The president is not entitled to delegate to some bodies or officials his powers as head of state.

Article 101. The president issues within his competence decrees and directives and organizes and supervises their fulfillment.

Article 102. The president may not hold other positions or receive monetary compensation aside from his pay, except for royalties for works of science, literature and art. The president shall suspend membership of political parties and other public associations pursuing political ends for the whole of his term in office.

Article 103. The president may tender his resignation at any time. The president's resignation shall be accepted by the Supreme Soviet.

Article 104. The president may be removed from office in the event of a violation of the constitution or his perpetration of a crime and also relieved of office early should it be impossible for him to perform his duties on the grounds of his state of health by a decree of the Supreme Soviet adopted by a majority of no less than two-thirds of the elected deputies of the Supreme Soviet. The question of removal of the president may be raised in accordance with the proposal of no fewer than 70 deputies of the Supreme Soviet. Findings concerning a violation by the president of the constitution shall be provided by the Constitutional Court, and on the perpetration of a crime, by a special commission of the Supreme Soviet. As of the moment of the presentation of the findings of the Constitutional Court concerning a violation of the constitution or the findings of a special commission concerning the perpetration of a crime, the president may not perform his duties prior to a corresponding decision being rendered by the Supreme Soviet. In the event of the removal of a president in connection with the perpetration of a crime, the case shall be examined on the merits of the charge by the Supreme Court.

Article 105. In the event of the office of president falling vacant or it not being possible for the president to perform his duties, his powers until the swearing-in of the newly elected president shall be transferred to the chairman of the Supreme Soviet. In this case the obligations of chairman of the Supreme Soviet shall be transferred to the first deputy chairman of the Supreme Soviet.

Article 106. A Cabinet of Ministers of the Republic of Belarus shall be formed under the auspices of the president of the Republic of Belarus for realization of the authority of the executive in the spheres of the economy, foreign policy, defense national security and the safeguarding of public order and other fields of state administration.

Article 107. The Cabinet of Ministers shall relinquish its authority before a newly elected president. Members of the Cabinet of Ministers shall be appointed and dismissed by the president. The premier, his deputies, the ministers of foreign affairs, finance, defense and internal affairs, and the chairman of the Committee for State Security shall be appointed and dismissed by the president with the consent of the Supreme Soviet. The premier shall exercise direct leadership of the activity of the Cabinet of Ministers, sign instruments of the Cabinet of Ministers that are binding throughout the territory of the Republic of Belarus and discharge other functions entrusted to him. The Supreme Soviet shall be entitled to receive a report from any member of the Cabinet of Ministers on questions of execution of the laws. In the event of the violation by a member of the Cabinet of Ministers of the constitution and the

laws, the Supreme Soviet shall have the right to raise before the president the question of his early dismissal.

Article 108. The jurisdiction of the Cabinet of Ministers and the procedure of its activity shall be determined on the basis of the constitution by the law on the Cabinet of Ministers of the Republic of Belarus.

Chapter 5: The Court

Article 109. Judicial authority in the Republic of Belarus belongs to the courts. The judicial system in the Republic of Belarus is determined by the law. The formation of special courts is prohibited.

Article 110. In the exercise of justice judges are independent and subordinate only to the law. Any interference in the activity of judges in the administration of justice is impermissible and entails liability in accordance with the law.

Article 111. Judges may not engage in entrepreneurial activity or perform other paid work, other than lecturing or scientific research which does not involve holding regular staff positions. The grounds for the election (appointment) of judges and their dismissal are specified by law.

Article 112. The courts shall administer justice on the basis of the constitution, the laws and other enforceable enactments adopted in accordance with them. If, during the hearing of a specific case, a court reaches a conclusion concerning the failure of an enforceable enactment to conform to the constitution or other law, it shall make a ruling in accordance with the constitution and the law and raise in the established procedure the question of this enforceable enactment being deemed unconstitutional.

Article 113. Cases in court shall be tried collegially, and in the instances specified by law, by judges individually.

Article 114. The trial of cases in all courts shall be open. The hearing of cases in a closed session of the court shall be permitted only in the instances determined by law, with the observance of all the rules of legal procedure.

Article 115. Justice shall be administered on the basis of adversarial proceedings and the equality of the parties in the trial.

Article 116. The parties shall have the right to appeal rulings, sentences and other judicial decisions.

Section V. Local Administration and Self-Government

Article 117. Local administration and self-government shall be exercised by the citizens via the local soviets of deputies, executive and administrative authorities, bodies of territorial community self-government, local referendums, assemblies and other forms of direct participation in state and public matters.

Article 118. The local soviets of deputies shall be elected by citizens of the corresponding administrative-territorial units for a four-year term.

Article 119. The local soviets of deputies and executive and administrative authorities shall within their competence, decide questions of local significance on the basis of all-

state interests and the interests of the populace residing on the corresponding territory and execute the decisions of superior state authorities.

Article 120. The following pertain to the exclusive jurisdiction of the local soviets of deputies: confirmation of programs of economic and social development, and local budgets and accounts of their administration;

—the establishment in accordance with the law of local taxes and dues;

—the determination within the limits established by the law of the procedure of the administration and disposal of municipal property;

—the scheduling of local referendums.

Article 121. The local soviets of deputies and the executive and administrative authorities shall, on the basis of current legislation, adopt decisions that are binding on the corresponding territory.

Article 122. Decisions of the local soviets of deputies not corresponding to legislation shall be reversed by superior soviets of deputies. Decisions of local executive and administrative authorities not corresponding to legislation shall be reversed by the corresponding soviets of deputies and superior executive and administrative-territorial authorities, and also by the president of the Republic of Belarus. Decisions of local soviets of deputies and their executive and administrative-territorial authorities restricting or violating the rights, liberties, and legitimate interests of the citizens, and also in other instances specified by legislation, may be appealed in a court of law.

Article 123. In the event of the systematic or flagrant violation by a local soviet of deputies of the requirements of legislation, it may be dissolved by the Supreme Soviet. Other grounds for the early termination of the authority of local soviets of deputies shall be determined by law.

Article 124. The competence and the procedure of the creation and the activity of bodies of local administration and self-government shall be determined by law.

Section VI. State Control and Supervision

Chapter 6: Constitutional Court of the Republic of Belarus

Article 125. Supervision of the constitutionality of enforceable enactments in the state shall be exercised by the Constitutional Court of the Republic of Belarus.

Article 126. The Constitutional Court of the Republic of Belarus shall be elected by the Supreme Soviet of the Republic of Belarus from qualified specialists in the field of law in a composition of 11 judges. The term of members of the Constitutional Court shall be 11 years. The age limit for members of the Constitutional Court is 60. Persons elected to the Constitutional Court may not engage in entrepreneurial activity or perform other paid work other than lecturing and scientific research not involving the holding of regular staff positions. Persons elected to the Constitutional Court shall be entitled to tender their resignation at any time. Direct or indirect pressure on the Constitutional Court or its members connected with activity pertaining to the exercise of constitutional supervision is impermissible and shall incur liability in accordance with the law.

Article 127. In accordance with proposals of the president, the chairman of the Supreme Soviet, standing commissions of the Supreme Soviet, no fewer than 70 deputies of the Supreme Soviet, the Supreme Court, the Supreme Economic Court and the procurator-general, the Constitutional Court shall produce findings on:

—the conformity of laws, international treaties, and other commitments of the Republic of Belarus to the constitution and instruments of international law ratified by the Republic of Belarus;

—the conformity of legal instruments of interstate formations of which the Republic of Belarus is a part, decrees of the president, and decisions of the Cabinet of Ministers and also enactments of the Supreme Court, the Supreme Economic Court and the procurator-general of a prescriptive nature to the constitution, the laws and instruments of international law ratified by the Republic of Belarus.

The Constitutional Court shall have the right to examine at its discretion the question of the conformity of enforceable enactments of any state authority and public association to the constitution and the laws and instruments of international law ratified by the Republic of Belarus.

Article 128. Enforceable enactments and international treaty or other obligations deemed by the Constitutional Court to be unconstitutional in view of their violation of human rights and liberties shall be deemed legally invalid as a whole or in a particular part thereof as of the moment the corresponding enactment is adopted. Other enforceable enactments of state authorities and public associations and international treaty or other obligations deemed by the Constitutional Court not to correspond to the constitution, the laws or instruments of international law ratified by the Republic of Belarus shall be deemed invalid as a whole or in a particular part thereof from a time determined by the Constitutional Court. Prescriptive-legal instruments of interstate formations of which the Republic of Belarus is a part deemed by the Constitutional Court not to correspond to the constitution, the laws or instruments of international law shall be deemed null and void on the territory of the Republic of Belarus as a whole or in a particular part thereof from a time determined by the Constitutional Court. The Constitutional Court shall make rulings by a simple majority of the votes of the full bench of justices.

Article 129. The findings of the Constitutional Court are final and not subject to appeal or protest.

Article 130. The Constitutional Court has the right to submit proposals to the Supreme Soviet on the need for revisions and addenda to the constitution and also on the adoption and revision of laws. Such proposals shall be subject to obligatory consideration by the Supreme Soviet.

Article 131. Persons elected to the Constitutional Court may not be arraigned on criminal charges, arrested or otherwise deprived of personal liberty without the consent of the Supreme Soviet, other than in instances of detention at the scene of a crime. Criminal proceedings against a member of the Constitutional Court may be instituted by the procurator-general with the consent of the Supreme Soviet.

Article 132. The competence and organization and procedure of the activity of the Constitutional Court shall be determined by the law.

Chapter 7: The Procuracy

Article 133. Supervision of the precise and uniform execution of the laws by ministries and other bodies under the jurisdiction of the Cabinet of Ministers, local representative and executive authorities, enterprises, organizations and institutions, public associations, officials and citizens shall be entrusted to the procurator-general of the Republic of Belarus and the procurators subordinate to him. The procuracy shall exercise supervision of execution of the laws in the investigation of crimes, the conformity to the law of judicial decisions in civil and criminal cases, and in cases involving administrative offenses in the instances specified by law, conduct pretrial investigations and support official prosecution in the courts.

Article 134. The uniform and centralized system of arms of the procuracy shall be headed by a procurator-general elected by the Supreme Soviet. Junior procurators shall be appointed by the procurator-general.

Article 135. The procurator-general and the junior procurators shall be independent in the exercise of their authority and shall be guided only by the law. The procurator-general shall be accountable in his activity to the Supreme Soviet.

Article 136. The competence and the organization and procedure of the activity of the arms of the procuracy shall be determined by law.

Chapter 8: Control Chamber of the Republic of Belarus

Article 137. Control of the administration of the republican budget, the use of public property and the execution of enactments of the Supreme Soviet regulating public property relationships and economic, financial and tax relationships shall be exercised by the Control Chamber.

Article 138. The Control Chamber shall be formed by the Supreme Soviet and shall operate under its leadership and be accountable to it.

Article 139. The chairman of the Control Chamber shall be elected by the Supreme Soviet for a five-year term.

Article 140. The competence and the organization and procedure of the activity of the Control Chamber shall be determined by law.

Section VII. Financial and Credit System of the Republic of Belarus

Article 141. The financial and credit system of the Republic of Belarus includes the budget system and the banking system, and also the financial resources of off-budget funds, enterprises, institutions and organizations, and the citizens. A unified budgetary-financial, tax, credit and currency policy is pursued on the territory of the Republic of Belarus.

Article 142. The budget system of the Republic of Belarus includes the republican and local budgets. Budget revenue is formed from taxes determined by the law and other mandatory payments and also other receipts. State spending is realized from the republic budget in accordance with its revenue side. In accordance with the law, off-budget funds may be formed in the Republic of Belarus.

Article 143. The procedure of the compilation, confirmation and administration of the budget and state off-budget funds shall be determined by law.

Article 144. An account of administration of the republican budget shall be presented for consideration by the Supreme Soviet no later than five months following the completion of the fiscal year in review. Accounts of administration of the local budgets shall be submitted for consideration by the corresponding soviets of deputies within the time frame determined by legislation. Accounts on the administration of the republican and local budgets shall be published.

Article 145. The banking system of the Republic of Belarus consists of the National Bank of the Republic of Belarus and other banks. The National Bank regulates credit relations and cash in circulation and determines the procedure of payments and has the exclusive right to issue money.

Section VIII. The Workings of the Constitution of the Republic of Belarus and the Procedure of Its Revision

Article 146. The constitution has supreme legal force. Laws and other instruments of state authorities shall be promulgated on the basis and in accordance with the Constitution of the Republic of Belarus. In the event of a discrepancy between a law and the constitution, the constitution shall operate and in the event of a discrepancy between an enforceable enactment and a law, the law shall operate.

Article 147. The question of a revision of and addendum to the constitution shall be considered by the Supreme Soviet on the initiative of no fewer than 150,000 citizens of the Republic of Belarus who are eligible to vote, no fewer than 40 deputies of the Supreme Soviet, the president or the Constitutional Court.

Article 148. A law on a revision of and addendum to the constitution may be adopted following two debates and approvals of the Supreme Soviet with an interval of no fewer than three months. Revisions and addenda to the constitution shall not be made in a period of a state of emergency or also in the final six months of the term of the Supreme Soviet.

Article 149. The constitution, laws on revisions and addenda thereto and on the implementation of the constitution and the said laws, and enactments on an interpretation of the constitution shall be deemed adopted if no less than two-thirds of the elected deputies of the Supreme Soviet have voted for them. Revisions and addenda to the constitution may be made via a referendum. A decision on a revision or addendum to the constitution by way of a referendum shall be deemed adopted if a majority of citizens on the electoral roll have voted for it.

[Signed] M. Gryb, the Chairman of the Supreme Soviet of the Republic of Belarus
15th March 1994
Minsk

CONSTITUTION OF THE REPUBLIC OF BULGARIA

(Adopted July 12, 1991)

We, the national representatives of the Seventh Grand National Assembly, in our aspiration to express the will of the Bulgarian people, declaring our loyalty to the universal human ideals of freedom, peace, humanism, equality, justice, and tolerance, and elevating to the rank of supreme principle the rights of the individual and his dignity and security, aware of our irrevocable duty to safeguard the national and state unity of Bulgaria, proclaim our resolve to create a democratic, law-governed, and social state, for which we adopt the present Constitution.

Chapter 1: Fundamental Principles

Article 1. Bulgaria is a republic with a parliamentary system of government. The full power of the state originates with the people. It is exercised by the people directly and through the authorities identified in this Constitution. No group of people, political party, or other organization, state institution, or individual person may usurp the right to exercise the people's sovereignty.

Article 2. The Republic of Bulgaria is a unified state with local self-governments. No autonomous territorial formations are allowed in it. The territorial integrity of the Republic of Bulgaria is inviolable.

Article 3. Bulgarian is the official language of the Republic.

Article 4. The Republic of Bulgaria is a state based on the rule of law. It is governed according to the Constitution and the laws of the country. The Republic of Bulgaria guarantees the life, dignity, and rights of the individual and provides conditions for the free development of the individual and civil society.

Article 5. The Constitution is the supreme law, and no other law may contradict it. The provisions of the Constitution have direct application. No one can be sentenced for any action or inaction that was not legally defined as a crime when it was committed. International treaties, ratified constitutionally, promulgated, and made effective by the Republic of Bulgaria, are part of the country's internal laws. They take precedence over conflicting domestic legislation. All legal acts must be made public. They become effective three days after their publication, unless a different time limit is stipulated.

Article 6. All people are born free and are equal in dignity and rights. All citizens are equal in the eyes of the law. No limitations to their rights or privileges are permitted on the basis of race, nationality, ethnic affiliation, sex, origin, religion, education, beliefs, political affiliation, personal or social position, or property status.

Article 7. The state is liable for damages caused as a result of illegal laws or actions committed by its authorities or officials.

Article 8. The power of the state is divided between a legislative, an executive, and a judicial branch.

Article 9. The Armed Forces guarantee the sovereignty, safety, and independence of the country, and protect its territorial integrity.

Article 10. Elections and national and local referenda are based on universal, equal, and direct elections by secret ballot.

Article 11. Political life in the Republic of Bulgaria is based on the principle of political pluralism. No single political party or ideology may be proclaimed or asserted as being that of the state. The parties contribute to the shaping and the expression of the political will of the citizens. The procedure governing the founding or the disbanding of political parties and the conditions governing their activities are established by law. Political parties may not be founded on ethnic, racial, or religious bases, nor is it permitted to found a party whose aim it is to assume state power by violent means.

Article 12. Citizens' associations are founded to satisfy and protect the interests of their members. Citizens' associations, including trade unions, may not set themselves political objectives or engage in political activities that belong intrinsically to political parties.

Article 13. There is freedom of religion. Religious institutions are separate from the state. The Eastern Orthodox religion is the traditional religion of the Republic of Bulgaria. Religious communities and institutions or religious convictions may not be used in the pursuit of political objectives.

Article 14. The family, motherhood, and children are protected by the state and society.

Article 15. The Republic of Bulgaria ensures the protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the sensible utilization of the country's natural wealth and resources.

Article 16. The law guarantees and protects labor.

Article 17. The law guarantees and protects the right to property and inheritance. Property may be private or public. Private property is inviolable. The management of state and township [obshtina] property is established by law. Expropriation of property in order to meet state or township needs must be according to law and provided that such need cannot be satisfied in any other way. Suitable compensation must be paid in advance.

Article 18. The state is the sole owner of all underground resources, the coastal beaches, public roadways, waters, forests and parks of national significance, natural preserves, and archaeological sites, as defined by law. The state has sovereign rights over the continental shelf and the exclusive economic zone for the study, development,

utilization, preservation, and management of biological, mineral, and energy resources of such maritime areas. The state has sovereign rights over the radio frequency spectrum and locations of the geostationary orbit assigned to the Republic of Bulgaria by international agreements. A state monopoly may be established by law over railroad transportation, national postal and telecommunications networks, the utilization of nuclear power, the production of radioactive items, weapons, explosives, and biologically potent substances. The conditions and procedures according to which the state may grant concessions for various projects and permits for activities as per the preceding paragraphs are regulated by law. State property is cared for and managed in the interest of the citizens and society.

Article 19. The economy of the Republic of Bulgaria is based on free economic initiative. The law establishes and guarantees for all citizens and juridical persons equal rights to engage in economic activities by preventing the abuse of monopoly and disloyal competition, and by protecting the consumer. Investments and economic activities of Bulgarian and foreign citizens and juridical persons are protected by the law. The law provides the conditions for establishing cooperatives and other types of associations by citizens and juridical persons for the purpose of economic and social advancement.

Article 20. The state creates conditions for the balanced development of the individual areas of the country and assists the territorial authorities and their activities through financial, credit, and investment policies.

Article 21. The land is a basic national resource and benefits from the special protection of the state and society. Arable land may be used exclusively for agricultural purposes. Changes in its use are permitted only when based on proven need, in accordance with conditions and procedures defined by the law.

Article 22. Foreigners and foreign juridical persons may not acquire the right of land ownership unless legally inherited. In such cases, they must transfer such ownership to someone else. Under conditions stipulated by law, foreigners and foreign juridical persons may acquire user rights, building rights, and other real rights.

Article 23. The state supplies conditions for the free development of science, education, and the arts, and aids them. It is also concerned with preserving the national historical and cultural heritage.

Article 24. The foreign policy of the Republic of Bulgaria is exercised in accordance with the principles and standards of international law. The fundamental objectives of the foreign policy of the Republic of Bulgaria are the country's national security and independence, the well-being and fundamental rights and freedoms of Bulgarian citizens, and assistance in the establishment of a just international order.

Chapter 2: Fundamental Rights and Obligations of Citizens

Article 25. Anyone who has at least one parent who is a Bulgarian citizen or anyone who was born on the territory of the Republic of Bulgaria is a Bulgarian citizen, unless he has acquired other citizenship by birth. Bulgarian citizenship may also be acquired

by naturalization. Individuals of Bulgarian origin may acquire Bulgarian citizenship through a facilitated procedure. A Bulgarian citizen by birth may not be deprived of his Bulgarian citizenship. A citizen of the Republic of Bulgaria may not be expelled from the country or extradited to another country. Bulgarian citizens who live abroad are under the protection of the Republic of Bulgaria. The conditions and procedures for acquiring, keeping, or losing Bulgarian citizenship are regulated by law.

Article 26. Irrespective of where they are, the citizens of the Republic of Bulgaria have all the rights and obligations stipulated in this Constitution. Foreigners who reside in the Republic of Bulgaria have all the rights and obligations as per this Constitution, with the exception of the rights and obligations for which the Constitution and the laws require Bulgarian citizenship.

Article 27. Foreigners who legally reside in the country may not be expelled from it or extradited to other countries against their wills, other than under the conditions and procedures defined by the law. The Republic of Bulgaria grants asylum to foreigners persecuted for their convictions or activities in defense of internationally recognized rights and freedoms. The conditions and procedures for granting asylum are established by law.

Article 28. Everyone has the right to life. Any attempt on a person's life will be prosecuted as a grave crime.

Article 29. No one may be subjected to torture or to cruel, inhuman, or degrading treatment, or to coercive assimilation. No one may be subjected to medical, scientific, or other experiments without a voluntary written agreement on his part.

Article 30. Every individual has the right to the freedom and inviolability of his person. No one may be detained, investigated, searched, or subjected to any other infringement of his personal inviolability other than under the conditions and procedures regulated by law. In urgent circumstances, specifically identified in the law, the authorized state body may detain a citizen and must immediately inform the judicial authorities of this act. The judicial authorities must issue a ruling on the legality of such an act within 24 hours of the detention. Everyone has the right to legal counsel from the moment of his detention or indictment. Everyone has the right to a private meeting with his defender. The secrecy of their communication is inviolable.

Article 31. Anyone charged with a crime must be brought before the judicial authorities within the legally stipulated time limit. No one can be forced to plead guilty or be sentenced exclusively on the basis of self-incrimination. An accused person is considered innocent until the opposite is ascertained and a court sentence enacted. The rights of the accused may not be restricted beyond what is necessary for the administration of justice. Prisoners are to be provided with conditions that are conducive to the exercise of their fundamental rights that are not limited by virtue of their sentences. Prison sentences are served only in places established by law. There is no statute of limitations for the criminal prosecution and implementation of punishment for crimes committed against peace and humanity.

Article 32. The private life of a citizen is inviolable. Everyone has the right to be protected from illegal interference in personal and family life and against violations of

his honor, dignity, and good name. No one may be followed, photographed, filmed, recorded, or subjected to other similar actions without his knowledge or with his express disapproval, other than in cases regulated by the law.

Article 33. A person's residence is inviolable. Without the agreement of the resident, no one may enter or remain inside it other than in cases expressly stipulated in the law. Entering a residence or staying in it without the consent of its occupant or without the permission of the judicial authority may be allowed only for the purpose of preventing an imminent crime or a crime in progress, for the capture of a criminal, or in extreme necessity.

Article 34. The freedom and confidentiality of correspondence and other communications are inviolable. Exceptions to this rule are allowed only by permission of the judicial authorities, if deemed necessary to expose or prevent serious crimes.

Article 35. Anyone has the right to freely choose his domicile, to move within the territory of the country, or to leave the country. This right may be restricted only by law, in order to safeguard national security, public health, or the rights and freedoms of other citizens. Any citizen of Bulgaria has the right to return to the country.

Article 36. Bulgarian citizens have the right and obligation to study and use the Bulgarian language. Citizens whose native tongues are not Bulgarian have the right to study and use their own languages as well as the obligation to study Bulgarian. Cases in which only the official language may be used are indicated in the law.

Article 37. Freedom of conscience, freedom of thought, and choice of religion or religious or atheistic views are inviolable. The state encourages tolerance and respect among believers of different faiths as well as between believers and nonbelievers. Freedom of conscience and religion may not be detrimental to national security, public order, public health and morality, or the rights and freedoms of other citizens.

Article 38. No one may be persecuted or have his rights restricted because of his convictions, or be detained or forced to provide information relative to his convictions or those of another person.

Article 39. Everyone has the right to express his opinion and to disseminate it in writing or orally, through sounds, images, or by any other means. This right may not be used to the detriment of the rights and reputations of others or to call for a forcible change in the constitutionally established order, the commission of a crime, the incitement of enmity, or acts of violence against an individual.

Article 40. The press and the other information media are free and not subject to censorship. A printed publication or any other information medium may be suppressed or confiscated only through an act of the judicial authorities, when good mores are violated or if it appeals for a violent change in the constitutionally established order, the commission of a crime, or an act of violence against an individual. The suppression is rescinded if it is not followed by confiscation within 24 hours.

Article 41. Anyone has the right to seek, obtain, or disseminate information. The exercise of this right may not be detrimental to the rights and good names of other citizens, national security, public order, public health, or morality. Citizens have the right to obtain information from a state authority or establishment on matters of

legitimate interest to them, provided that such information is not a state secret or other secret protected by the law, or violates the rights of others.

Article 42. Citizens who are age 18 or older, with the exception of those who are legally incapacitated or serving prison sentences, have the right to elect state and local authorities and to participate in public referenda. The organization and procedures for holding elections and referenda are regulated by law.

Article 43. Citizens have the right to assemble for meetings and demonstrations peacefully and without arms. The procedure for organizing and holding meetings and demonstrations is defined in the law. No permit is required for a meeting held indoors.

Article 44. Citizens are free to form associations. Organizations whose activities are directed against the country's sovereignty and territorial integrity or the unity of the nation, or that encourage racial, national, ethnic, or religious hatred, or violate the rights and freedoms of the citizens, as well as organizations that establish secret or militarized structures or try to achieve their objectives through violent means, are prohibited. The law will regulate organizations that are subject to registration, the procedure for their termination, and their relations with the state.

Article 45. Citizens have the right to file complaints, suggestions, and petitions with the state authorities.

Article 46. Marriage is a voluntary union of a man and a woman. Only a civil marriage is considered legal. Spouses enjoy equal rights and obligations within the marriage and the family. The form of the marriage, the stipulations and procedures for its conclusion and termination, and the personal and property relations between spouses are regulated by law.

Article 47. The raising and the education of children until they come of legal age is a right and an obligation of their parents; the state provides assistance. Mothers enjoy the special protection of the state, which grants them paid leave before and after childbirth, free obstetrical care, easier working conditions, and other types of social assistance. Children born out of wedlock have the same rights as those born within a marriage. Children who are deprived of the care of their relatives are under the special protection of the state and society. The conditions and procedures for restricting or depriving parents of their rights are regulated by law.

Article 48. Citizens have the right to work. The state is concerned with providing conditions for the exercise of this right. The state creates conditions conducive to the exercise of the right to work by the physically or mentally handicapped. A citizen is free to choose his own profession and place of work. No one can be made to perform forced labor. Workers and employees have the right to healthy and safe working conditions, a minimal wage, and remuneration consistent with the work done, as well as rest and leave under the conditions and procedures regulated by law.

Article 49. Workers and employees have the right to form trade unions and associations for the protection of their interests in the areas of labor and social security. Employers have the right to form associations to safeguard their economic interests.

Article 50. Workers and employees have the right to strike in defense of their collective

economic and social interests. This right may be exercised under the conditions and procedures regulated by law.

Article 51. Citizens have the right to social security and social assistance. Individuals who are temporarily unemployed receive social security assistance under the conditions and procedures regulated by law. Elderly people who are without relatives and who are unable to support themselves with their own assets, and physically or mentally handicapped individuals are under the special protection of the state and society.

Article 52. Citizens have the right to health insurance, which guarantees them accessible medical aid, and to free medical services, under the conditions and procedures regulated by law. The cost of health care for citizens is financed by the state budget, employers, personal and collective insurance premiums, and other sources, under the conditions and procedures regulated by law. The state protects the health of citizens and encourages the development of sports and tourism. No one can be forced to undergo treatment or be subjected to health measures other than in cases stipulated by the law. The state supervises all health establishments and the manufacturing of and trading in medical drugs, bio-preparations, and medical equipment.

Article 53. The right to education is universal. School attendance until age 16 is mandatory. Primary and secondary education in state and township schools is free. Under conditions regulated by the law, education in higher state schools is also free. Higher schools have academic autonomy. Citizens and organizations may found schools under the conditions and procedures regulated by law. Instruction in such schools must be consistent with the requirements of the state. The state encourages education by establishing and financing schools; it helps capable secondary and higher school students; it creates conditions for vocational training and retraining; it supervises all types and levels of schools.

Article 54. The law acknowledges and guarantees to everyone the right to the benefits provided by national and universal human values, and the right to develop his own culture, in accordance with his ethnic affiliation. Freedom of artistic, scientific, and technical creativity is acknowledged and guaranteed by law. The law protects invention, authorship, and related rights.

Article 55. Citizens have the right to a healthy and favorable environment, consistent with stipulated standards and regulations. They have an obligation to protect the environment.

Article 56. A citizen has the right to defend himself if his rights or legitimate interests are violated or threatened. In dealings with state establishments, a citizen may have his own legal counsel.

Article 57. The fundamental rights of citizens are irrevocable. These rights may not be abused and may not be exercised to the detriment of the rights or legitimate interests of others. In the case of a declaration of war or martial law or any other state of emergency, the individual rights of citizens may be temporarily restricted by law, with the exception of the rights stipulated in Article 28; Article 29; Article 31, Sentences 1, 2, and 3; Article 32, Sentence 1; and Article 37.

Article 58. Citizens must observe and obey the Constitution and the laws. They must respect the rights and legitimate interests of others. Religious or other beliefs are not grounds for refusing to fulfill the obligations imposed by the Constitution and laws.
Article 59. The defense of the fatherland is the duty and the honor of all Bulgarian citizens. Treason and betrayal of the fatherland are grave crimes and are punished with the full strictness of the law. The fulfillment of military obligations, the conditions and procedures for exemption from them, and the substitution for them by alternate service are regulated by the law.
Article 60. Citizens have the obligation to pay taxes and fees stipulated by the law, consistent with their incomes and property. Taxes may be reduced or increased only by law.
Article 61. Citizens must assist the state and society in the case of natural and other disasters, under the conditions and procedures regulated by law.

Chapter 3: National Assembly [Narodno Subranie]

Article 62. The National Assembly exercises legislative authority and provides parliamentary control.
Article 63. The National Assembly consists of 240 national representatives [narodni predstaviteli].
Article 64. The National Assembly is elected for a four-year term. In cases of war, martial law, or an emergency that may have taken place during or after the expiration of the mandate of the National Assembly, its term is extended until such conditions no longer exist. An election for a new National Assembly is held no later than two months after the mandate of the previous National Assembly has elapsed.
Article 65. Any Bulgarian citizen who does not hold other citizenship, is 21 years old, is not legally disqualified, and is not serving a prison sentence may be elected to be a national representative. A national representative candidate who holds a state position may not hold the state position after his registration as a candidate.
Article 66. The legality of elections may be challenged in the Constitutional Court in accordance with the procedure regulated by law.
Article 67. National representatives represent not only their constituents but also the entire nation. Binding instructions to a representative are invalid. National representatives act on the basis of the Constitution and the laws and in accordance with their own consciences and convictions.
Article 68. National representatives may not hold any other state positions or engage in activities that, according to the law, are incompatible with the status of national representatives. A national representative who has been appointed a minister may not exercise his mandate as long as he remains a minister. In that case, he is replaced according to the procedure regulated by the law.
Article 69. National representatives may not be held criminally liable for views expressed by them and for their votes in the National Assembly.
Article 70. National representatives may not be detained or criminally indicted other

than for serious crimes, and then only with the permission of the National Assembly or, should the latter be in recess, of the National Assembly chairman. Permission to detain is not requested if a representative is caught in the act of committing a serious crime. In that case, however, the National Assembly is immediately notified, or, if it is in recess, notification is served to the chairman of the National Assembly.

Article 71. National representatives receive remuneration, the amount of which is determined by the National Assembly.

Article 72. The powers of a national representative expire before the end of his term in the following cases:

(1) If he submits his resignation to the National Assembly;

(2) If a court judgment is enacted, imposing a prison term for a malicious crime, or if serving the prison term has not been postponed;

(3) In cases of proven ineligibility or incompatibility;

(4) If he dies.

In the cases stipulated in Item 1 and 2, the decision must be made by the National Assembly, and in the cases in Item 3, by the Constitutional Court.

Article 73. The organization and activities of the National Assembly are based on the Constitution and on a regulation adopted by the National Assembly.

Article 74. The National Assembly is a permanent acting body. It alone determines its recesses.

Article 75. The newly elected National Assembly is convened for its first meeting by the president of the Republic no later than one month after a National Assembly election. If, within the stipulated time, the president has not convened the National Assembly, it must be convened by one-fifth of the national representatives.

Article 76. The first session of the National Assembly is opened by the oldest national representative present. At their first session, national representatives take the following oath: "I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the country and to be guided in all my actions by the interests of the people. I thus have sworn." The chairman and the deputy chairmen of the National Assembly are elected at the same session.

Article 77. The chairman of the National Assembly [Predsedatelyat na Narodnoto Subranie]:

(1) Represents the National Assembly;

(2) Submits a draft agenda;

(3) Opens, presides over, and closes the meetings of the National Assembly and ensures that order is maintained during the sessions;

(4) Certifies with his signature the content of the laws passed by the National Assembly;

(5) Promulgates the resolutions, declarations, and appeals passed by the National Assembly;

(6) Organizes the international relations of the National Assembly.

The deputy chairmen of the National Assembly assist the chairman and perform whatever activities he has assigned them.

Article 78. The National Assembly is summoned to sessions by the National Assembly chairman, as follows:

(1) On his initiative;

(2) At the request of one-fifth of the national representatives;

(3) At the request of the president;

(4) At the request of the Council of Ministers.

Article 79. The National Assembly elects permanent and temporary commissions of deputies. The permanent commissions assist the National Assembly in its activities and exercise parliamentary control on its behalf. Temporary commissions are appointed for study and investigative purposes.

Article 80. If so requested, officials and private citizens must appear to testify before the parliamentary commissions and submit to them any requested information or documents.

Article 81. The National Assembly may sit in session and pass laws if more than one-half of the national representatives are present. The National Assembly passes laws and other legal acts by a simple majority of national representatives present, unless a qualified majority is required by the Constitution. Votes are individual and public, unless the Constitution requires or the National Assembly chooses a secret ballot.

Article 82. The meetings of the National Assembly are public. By exception, the National Assembly may resolve to meet behind closed doors.

Article 83. Members of the Council of Ministers may participate in the sessions of the National Assembly and in the meetings of the parliamentary commissions. At their request, they are given priority in testifying. The National Assembly and the parliamentary commissions may make it mandatory for ministers to attend their meetings and to answer questions.

Article 84. The National Assembly:

(1) Adopts, amends, supplements, or rescinds laws;

(2) Adopts the state budget and the report on its implementation;

(3) Sets taxes and determines their amounts;

(4) Schedules elections for president of the Republic;

(5) Adopts resolutions on holding national referenda;

(6) Appoints or dismisses the prime minister and, in response to his proposal, the Council of Ministers; makes changes in the Cabinet as proposed by the prime minister;

(7) Creates, reorganizes, and dissolves ministers at the proposal of the prime minister;

(8) Appoints and dismisses the leadership of the Bulgarian National Bank and other institutions, as regulated by law;

(9) Gives its consent on the signing of contracts for state loans;

(10) Decides on matters concerning the declaration of war and the making of peace;

(11) Authorizes the deployment and use of the Bulgarian Armed Forces outside the country as well as the stationing of foreign forces on the country's territory or the transit of the country's territory by such forces;

(12) Declares martial law or any other state of emergency for the entire territory or part of the territory of the country as proposed by the president or the Council of Ministers;

(13) Grants amnesties;

(14) Establishes orders and medals;

(15) Determines official holidays.

Article 85. The National Assembly ratifies or denounces with a law international treaties that:

(1) Are of a political or military nature;

(2) Concern the participation of the Republic of Bulgaria in international organizations;

(3) Call for corrections to the borders of the Republic of Bulgaria;

(4) Contain financial commitments by the state;

(5) Stipulate the participation of the state in any arbitration or court settlement of international disputes;

(6) Concern basic human rights;

(7) Affect the action of a law or require new legislation for their implementation;

(8) Specifically require ratification.

Treaties ratified by the National Assembly may be amended or denounced only in accordance with the procedures stipulated in the treaties themselves or in accordance with the universal accepted provisions of international law. The signing of international treaties that require constitutional amendments must be preceded by the passage of such amendments.

Article 86. The National Assembly passes laws [zakoni], resolutions [resheniya], declarations [deklaratsii], and appeals [obrushteniya]. The laws and resolutions passed by the National Assembly are binding for all state authorities, organizations, and citizens.

Article 87. Every member of the National Assembly and the Council of Ministers has the right to initiate legislation. The draft law for the state budget is written and submitted by the Council of Ministers.

Article 88. Laws are discussed and passed with two rounds of balloting, at separate sessions. By way of exception, the National Assembly may decide that both rounds take place during the same session. Other legal acts passed by the National Assembly are passed with one round of balloting. The adopted legal acts are published in *Durzhaven Vestnik,* no later than 15 days after their adoption.

Article 89. One-fifth of the national representatives may ask the National Assembly for a notion of no-confidence in the Council of Ministers. The motion is adopted when more than one-half of all national representatives have voted in its favor. Should the National Assembly pass a motion of no-confidence in the prime minister or the Council of Ministers, the prime minister submits the resignation of the Cabinet. Should the National Assembly reject the motion of no-confidence in the Council of Ministers, no new motion of no-confidence for the same reason may be submitted within the next six months.

Article 90. The national representatives have the right to address questions and interpellations to the Council of Ministers or individual ministers, who must respond. By a motion of one-fifth of the national representatives, debates may be held on an interpellation and a resolution passed.

Article 91. The National Assembly appoints the members of the General Accounting

Office [Smetnata Palata], which monitors the execution of the budget. The organization, rights, and procedures of the General Accounting Office are regulated by law.

Chapter 4: President of the Republic [Prezident na Republikata]

Article 92. The president is the head of state. He embodies the unity of the nation and represents the Republic of Bulgaria in international relations. The president is assisted in his activities by a vice president [vitseprezident].

Article 93. The president is elected by a direct election by the voters for a five-year term, in accordance with the procedure regulated by law. Any Bulgarian citizen by birth, 40 years old or older, who meets the criteria for being elected a national representative and has resided for the last five years in the country may be elected president. The candidate for whom more than one-half of the valid ballots have been cast shall be considered elected, provided that more than one-half of the voters have participated in the election. If no candidate has been elected, a new election is held within the next seven days, with the two candidates who have obtained the highest number of votes competing. The candidate with the most votes is elected. An election for a new president must be held no earlier than three months and no later than two months before the expiration of the term of the current president. Disputes concerning the legitimacy of the election for president are resolved by the Constitutional Court within a month following the election.

Article 94. The vice president is elected at the same time as the president on the same ticket, in accordance with the conditions and procedure for the election of a president.

Article 95. A president and a vice president may be reelected to their same positions only once. Neither the president nor the vice president may be a national representative; perform other state, public, or economic activities; or participate in the leadership of a political party.

Article 96. The president and the vice president take their oaths in the presence of the National Assembly, as per Article 76, Sentence 2.

Article 97. The authority of the president or the vice president may be terminated before his term expires in the following circumstances:

(1) If he submits his resignation to the Constitutional Court;

(2) If he is permanently incapacitated by a grave illness.

(3) Under the circumstances of Article 103;

(4) If he dies.

In the circumstances stipulated in Items 1 and 2, the rights of the president or the vice president are terminated after the Constitutional Court has confirmed the circumstances of those items. Should any of the above circumstances occur [regarding the president], the vice president assumes the position of president for the duration of his term. Should it be impossible for the vice president to assume the position of president, the authority of the president is assumed by the chairman of the National Assembly until a new president and a new vice president have been elected. In that case, the election for president and vice president is held within two months.

Article 98. The president of the Republic:

(1) Schedules elections for the National Assembly and for local self-governing bodies and sets the date for the holding of national referenda, if a resolution to this effect has been passed by the National Assembly;

(2) Issues appeals to the people and to the National Assembly;

(3) Concludes international treaties in the cases stipulated by law;

(4) Promulgates laws;

(5) Ratifies changes in the borders and centers of administrative-territorial units when proposed by the Council of Ministers;

(6) At the request of the Council of Ministers, appoints and dismisses from their positions the heads of diplomatic missions and the permanent representatives of the Republic of Bulgaria to international organizations, and accepts the credentials and letters of recall of foreign diplomatic representatives to this country;

(7) Appoints and dismisses from their positions other state officials, as stipulated by law;

(8) Awards orders and medals;

(9) Grants, restores, rescinds, or withdraws Bulgarian citizenship;

(10) Grants asylum;

(11) Exercises the right to pardon;

(12) Cancels uncollectible state claims;

(13) Designates sites of national significance and gives names to populated areas;

(14) Informs the National Assembly concerning basic problems within the limits of his authority.

Article 99. After consulting with the parliamentary groups, the president suggests to the candidate for prime minister, who has been nominated by the largest parliamentary group, that he form a cabinet. If, within a period of seven days, the candidate for prime minister is unable to propose a list of members of the Council of Ministers, the president assigns the same duty to the candidate for prime minister nominated by the second-largest parliamentary group. If, in this case, as well, no cabinet is proposed within the time stipulated in the preceding paragraph, the president asks any other parliamentary group to nominate a candidate for prime minister.

Upon the successful termination of consultations, the president asks the National Assembly to nominate the candidate for prime minister. If no agreement on forming a cabinet can be reached, the president appoints a caretaker cabinet, disbands the National Assembly, and schedules a new election within the time stipulated in Article 64, Sentence 3. The legal act with which the president dissolves the National Assembly also gives the date for the election of a new National Assembly. The procedure for forming a cabinet as per the preceding paragraphs also applies in the cases stipulated in the first full sentence of Article 111. In the cases stipulated in the last two sentences of Article 111, the president may not dissolve the National Assembly during the final three months of his term. If, within that time, the parliament is unable to form a cabinet, the president appoints a caretaker cabinet.

Article 100. The president is the commander-in-chief of the Armed Forces of the Republic of Bulgaria. The president appoints and dismisses the high command of the

Armed Forces and awards the high military ranks at the proposal of the Council of Ministers. The president heads the Consultative Council for National Security [Konsultativniyat Suvet za Natsionalna Sigurnost], the statute of which is regulated by law.

The president declares general or partial mobilization at the proposal of the Council of Ministers, according to the law. If the National Assembly is in recess, the president may declare a state of war in the event of armed attack against the country or in response to the need for urgent implementation of international obligations; he may also declare martial law or any other state of emergency. In such cases, the National Assembly is convened immediately to vote on a declaration.

Article 101. Within the deadline stated in Article 88, the president, stating his reasons, may return a law to the National Assembly for further debate, which cannot be refused. The National Assembly can pass such a law by a simple majority of all national representatives. A law, passed again by the National Assembly, must be promulgated by the president within seven days of its receipt.

Article 102. In accordance with his authority, the president issues ukases [ukazi] and sends out appeals [obrushteniya] and messages [poslaniya]. A ukase must be countersigned by the prime minister or the respective minister. Ukases issued by the president not requiring countersignatures apply to:

(1) Appointing a caretaker cabinet;
(2) Assigning an investigative mandate for the formation of a cabinet;
(3) Dissolving the National Assembly;
(4) Returning a law voted by the National Assembly for a second debate;
(5) Determining the organization and procedure for the activities of the offices attached to the presidency and appointing their staffs;
(6) Scheduling elections and referenda;
(7) Promulgating laws.

Article 103. The president and the vice president may not be held liable for any actions committed by them in the performance of their duties, with the exception of treason or violation of the Constitution. Impeachment requires a motion from no less than one-quarter of the national representatives and is supported by the National Assembly if more than two-thirds of the national representatives have voted in its favor. The Constitutional Court considers the charges formulated against the president or the vice president within one month of their filing. The president or the vice president loses his power if it is proved that he has committed treason or violated the Constitution. Neither the president nor the vice president may be detained, and no criminal prosecution may be instigated against him.

Article 104. The president may assign to the vice president some of his rights listed in Article 98, Items 7, 9, 10, and 11.

Chapter 5: Council of Ministers [Ministerski Suvet]

Article 105. The Council of Ministers guides and implements the domestic and foreign policy of the country in accordance with the Constitution and the laws. The

Council of Ministry ensures the maintenance of public order and national security and provides the overall leadership of the state administration and the Armed Forces.

Article 106. The Council of Ministers directs the implementation of the state budget; organizes the management of state property; and concludes, ratifies, and denounces international treaties as stipulated by the law.

Article 107. The Council of Ministers rescinds illegal or improper legal acts issued by the ministers.

Article 108. The Council of Ministers consists of a prime minister, deputy prime ministers, and ministers. The prime minister guides and coordinates the overall policy of the government and is responsible for its implementation. He appoints and dismisses deputy ministers. Ministers head individual ministries unless otherwise resolved by the National Assembly. They are responsible for their actions.

Article 109. The members of the Council of Ministers swear before the National Assembly the oath established by Article 76, Sentence 2.

Article 110. Members of the Council of Ministers must be Bulgarian citizens who meet the qualifications set for electing national representatives.

Article 111. The legal rights of the Council of Ministers are terminated in the following cases:

(1) If there is a vote of no-confidence in the Council of Ministers or the prime minister;

(2) If the Council of Ministers or the prime minister submit their resignations;

(3) If the prime minister dies.

The Council of Ministers submits its resignation to the newly elected National Assembly. In the cases listed in the preceding paragraphs, the Council of Ministers continues to exercise its functions until a new Council of Ministers has been appointed.

Article 112. The Council of Ministers may request of the National Assembly a vote of confidence on its overall policy, on a program, or on any specific item. The resolution must be approved by a simple majority of more than one-half of the attending national representatives. If the Council of Ministers fails to obtain the requested vote of confidence, the prime minister submits the resignation of the Cabinet.

Article 113. A member of the Council of Ministers may not hold a position or engage in activities incompatible with the position of a national representative. The National Assembly may determine other positions that may not be held and other activities that may not be performed by members of the Council of Ministers.

Article 114. The Council of Ministers promulgates decrees [postanovleniyal], orders [razporezhdaniya], and resolutions [resheniya]. The Council of Ministers issues decrees to promulgate rules [pravilnitsi] and regulations [naredbi].

Article 115. Ministers issue rules [pravilnitsi], regulations [naredbi], instructions [instruktsii], and orders [zapovedi].

Article 116. State officials implement the will of the nation and serve its interests. They must be guided exclusively by the law and remain politically neutral in the performance of their duties. The conditions under which state employees are appointed and dismissed, may be members of political parties and trade union organizations, and exercise their right to strike are regulated by law.

Chapter 6. The Judicial Branch [Sudebna Vlast]

Article 117. The judicial branch protects the rights and legitimate interests of citizens, juridical persons, and the state. The judicial branch is independent. Judges, court assessors, prosecutors, and investigators are guided strictly by the law in the exercise of their functions. The judicial branch has a separate budget.

Article 118. Justice is administered in the name of the people.

Article 119. Justice is administered by the Supreme Court of Appeals [Vurkhovniyat Kasatsionen Sud], the Supreme Administrative Court [Vurkhovniyat Administrativen Sud], and the appeal [apelativni], okrug [okruzhni], military [voenni], and rayon [rayonni] courts [sudilishta]. Specialized courts may be established by law. No extraordinary courts are allowed.

Article 120. The courts supervise the legality of legislation and the actions of administrative bodies. Private citizens and juridical persons may appeal any administrative act affecting them other than those stipulated by law.

Article 121. The courts ensure the equal and mutual right to challenge of the parties to a judicial proceeding. The purpose of any legal proceeding is to determine the truth. Trials in all courts are conducted publicly unless otherwise stipulated by the law. Actions resulting from the administration of justice must be justified.

Article 122. Citizens and juridical persons have the right to a defense at all stages of the legal process. The exercise of the right to a defense is regulated by law.

Article 123. In cases stipulated in the law, a court assessor participates in the administration of justice.

Article 124. The Supreme Court of Appeals provides the supreme judicial supervision over the accurate and equal application of the laws by all courts.

Article 125. The Supreme Administrative Court provides the supreme judicial supervision over the accurate and equal application of the laws in administrative justice. The Supreme Administrative Court rules on arguments concerning the legality of acts promulgated by the Council of Ministers and individual ministers, as well as any other acts indicated by the law.

Article 126. The structure of the prosecutor's office corresponds to that of the courts. The prosecutor general supervises the legality of the activities of all prosecutors and provides systematic guidance.

Article 127. The prosecutor's office supervises the observance of the law by:

(1) Bringing to justice individuals who have committed crimes and prosecuting criminal cases of a general nature;

(2) Supervising the execution of punitive and other coercive measures;

(3) Taking steps to rescind illegal laws;

(4) In cases stipulated by law, participating in civil and administrative trials.

Article 128. The investigative authorities are part of the legal system. They implement the preliminary procedures in criminal cases.

Article 129. Judges, prosecutors, and investigators are appointed, promoted, demoted, transferred, or dismissed by the High Judicial Council [Visshiyat Sudeben Suvet]. The

president of the Supreme Court of Appeals, the president of the Supreme Administrative Court, and the prosecutor-general are appointed or dismissed by the president of the Republic, as proposed by the High Judicial Council; they are appointed for single seven-year terms. The president may not refuse their appointments or dismissals if second requests to this effect have been made. After holding his position for a period of three years, a judge, a prosecutor, or an investigator may not be replaced. He may be dismissed only for reason of retirement, resignation, or the enactment of a prison sentence for the commission of a malicious crime, or in the case of lasting actual inability to perform his duties for a period in excess of one year.

Article 130. The High Judicial Council has 25 members. The president of the Supreme Court of Appeals, the president of the Supreme Administrative Court, and the prosecutor-general are ex officio members. Lawyers with high professional and moral integrity and at least 15 years of professional experience, who are not ex officio members, may be appointed members of the High Judicial Council. The National Assembly appoints 11 of the High Judicial Council members; the other 11 are appointed by judicial authorities. The appointed members of the High Judicial Council serve five-year terms. They may not be reelected immediately after the expiration of their terms. The sessions of the High Judicial Council are presided over by the minister of justice, who has no voting rights.

Article 131. The resolutions of the High Judicial Council on appointing, promoting, demoting, transferring, or dismissing judges, prosecutors, and investigators, as well as the motions it submits in accordance with Article 129, Sentence 2, must be passed by secret balloting.

Article 132. Judges, prosecutors, and investigators have the same immunity as national representatives. In cases stipulated by law, the High Judicial Council may lift the immunity of a judge, a prosecutor, or an investigator.

Article 133. The law governs the organization and activities of the High Judicial Council, the courts, and prosecutorial and investigative bodies; the status of judges, prosecutors, and investigators; the conditions and procedures for the appointment and dismissal of judges, court assessors, prosecutors, and investigators, as well as the exercise of their responsibilities.

Article 134. The bar is a free, independent, and self-governing body. It assists citizens and juridical persons in the defense of their rights and legitimate interests. The organization and procedure governing the activities of the bar are regulated by law.

Chapter 7. Local Self-Government and Local Administration

Article 135. The territory of the Republic of Bulgaria is divided into townships and oblasts. The territorial divisions and rights of the capital city and the other large cities are regulated by law. Other administrative-territorial units and self-governing bodies within them may be established only on the basis of a law.

Article 136. The township is the basic administrative-territorial unit within which local self-government is exercised. The citizens participate in governing the township

through the local self-governing bodies they have elected as well as directly, through referenda and general meetings of the inhabitants. The boundaries of townships are set by popular referenda. The township is a juridical person.

Article 137. The self-governing territorial communities may form associations for the purpose of resolving common problems. The law provides conditions for the association of townships.

Article 138. In a township, the township council is the local self-governing body. It is elected by the inhabitants of the respective township to a four-year term in accordance with a procedure regulated by law.

Article 139. The mayor [kmetut] exercises executive power in the township. He is elected by the inhabitants or the township council to a four-year term in accordance with the procedure regulated by law. The mayor is guided in his activities by the law, the legal acts passed by the township council, and the decisions of the inhabitants.

Article 140. The township has the right to own property that it uses in the interest of the territorial community.

Article 141. The township has an autonomous budget. The permanent revenue sources of the township are defined by law. The state assists the townships in their normal activities by contributing funds from the budget and by other means.

Article 142. The oblast is an administrative-territorial entity that implements regional policies and state administrative tasks in the localities and ensures the congruence of national and local interests.

Article 143. The oblast is governed by an oblast governor [oblasten upravitel], assisted by the oblast administration. The oblast governor is appointed by the Council of Ministers. The oblast governor ensures the implementation of state policy. He is responsible for safeguarding the national interests, legality, and public order, and provides administrative control.

Article 144. The central bodies of the state and their local representatives exercise oversight concerning the legality of laws passed by local self-government authorities only if such control is stipulated by law.

Article 145. Township councils may appeal in court any acts or actions that violate their rights.

Article 146. The organization and procedures governing the activities of local self-governing bodies and local administrations are regulated by law.

Chapter 8. Constitutional Court [Konstitutsionen Sud]

Article 147. The Constitutional Court consists of 12 justices, one-third of whom are elected by the National Assembly; the second third is appointed by the president, and the final third is elected at a joint meeting of the justices of the Supreme Court of Appeals and the Supreme Administrative Court. Constitutional Court justices serve nine-year terms. They may not be reelected to the same position. The membership of each quota [kvota] of the Constitutional Court is renewed once every three years, in

accordance with legal procedures. Lawyers of high professional and moral integrity with at least 15 years of professional experience are eligible for appointment as Constitutional Court justices. The Constitutional Court justices elect a court president to a three-year term by secret balloting. The position of a member of the Constitutional Court is incompatible with the mandate of a national representative, a state or public position, membership in a political party or trade union, or the performance of a liberal, commercial, or any other paid professional activity. The members of the Constitutional Court enjoy the same immunity as national representatives.

Article 148. The mandate of a Constitutional Court justice is terminated in the following cases:

(1) The expiration of a term;

(2) A resignation submitted to the Constitutional Court;

(3) The enactment of a court sentence imposing a prison sentence for commission of a malicious crime;

(4) The actual inability to perform one's duties for more than one year;

(5) Incompatibility with the positions and activities as per Article 147, Sentence 7;

(6) Death.

The Constitutional Court lifts the immunity and determines the actual inability of justices to perform their obligations by means of a secret ballot and by a majority of at least two-thirds of all justices. Should the mandate of a justice of the Constitutional Court be terminated, a candidate from the appropriate tier is elected within a period of one month.

Article 149. The Constitutional Court:

(1) Provides mandatory interpretations of the Constitution;

(2) Rules on requests to decide the constitutionality of any law or legal act passed by the National Assembly or the president;

(3) Settles arguments on the jurisdictions of the National Assembly, the president, and the Council of Ministers, as well as between local self-governments and central executive bodies;

(4) Rules on the consistency between the international treaties signed by the Republic of Bulgaria and the Constitution, prior to their ratification, as well as on the consistency between the laws and the universally accepted standards of international law and the international treaties to which Bulgaria is a signatory;

(5) Issues opinions on disputes concerning the constitutionality of political parties and associations;

(6) Issues opinions on arguments about the legality of the elections of the president and the vice president;

(7) Issues opinions on arguments concerning the legality of the election of a national representative;

(8) Issues rulings on charges formulated in the National Assembly against the president and the vice president.

The rights of the Constitutional Court may be neither increased nor decreased by law.

Article 150. The Constitutional Court acts on the initiative of no less than one-fifth of the national representatives, the president, the Council of Ministers, the Supreme Court of Appeals, the Supreme Administrative Court or the prosecutor-general. Arguments on the question of authority as per Item 3 of Article 149 may be submitted by township councils, as well. Should a disparity between a law and the Constitution be noted, the Supreme Court of Appeals or the Supreme Administrative Court tables the consideration of the case and submits the matter to the Constitutional Court.

Article 151. The Constitutional Court makes its rulings by a majority vote of more than one-half of all justices. The rulings of the Constitutional Court are published in *Durzhaven Vestnik* within 15 days of their adoption. The ruling is enacted three days after its publication. Any act ruled unconstitutional becomes invalid as of the day of the enactment of the ruling. Any part of the law not ruled unconstitutional remains in effect.

Article 152. The organization and procedures governing the activities of the Constitutional Court are regulated by law.

Chapter 9. Amendments and Supplements to the Constitution; Adoption of a New Constitution

Article 153. The National Assembly may amend and supplement any provision included in the Constitution, with the exception of those that are the prerogative of the Grand National Assembly.

Article 154. The right to initiate constitutional amendments and supplements is held by one-quarter of the national representatives and by the president. Any motion to this effect must be considered by the National Assembly no earlier than one month and no later than three months after it has been filed.

Article 155. The National Assembly may pass a law on amending and supplementing the Constitution by a majority of three-quarters of the national representatives, after three rounds of balloting on different days. If a motion is approved by less than three-quarters but no less than two-thirds of the votes of the national representatives, the motion is resubmitted for consideration after two months have elapsed, but before the passage of five months. In any new debate, a motion may be approved if at least two-thirds of the national representatives have voted for it.

Article 156. A law amending or supplementing the Constitution must be signed by the chairman of the National Assembly and promulgated in *Durzhaven Vestnik* within seven days of its adoption.

Article 157. The Grand National Assembly consists of 400 national representatives elected in accordance with common procedures.

Article 158. The Grand National Assembly:

(1) Adopts a new constitution;

(2) Rules on changes in the territory of the Republic of Bulgaria and ratifies international treaties stipulating such changes;

(3) Settles questions related to changes in the form of the state structure and the state administration;

(4) Settles questions related to amendments to Article 5, Sentences 2 and 4 and Article 57, Sentences 1 and 3 of the Constitution;

(5) Rules on matters related to amending and supplementing Chapter 9 of the Constitution.

Article 159. The right to initiate changes as per the preceding article can be exercised by either at least one-half of the national representatives or by the president. The draft of a new constitution or an amendment to the present Constitution that relates to changes in the territory of the country as defined in Article 158 must be discussed by the National Assembly not earlier than two months and not later than five months after its submission.

Article 160. The National Assembly may rule, by a majority of two-thirds of the national representatives, that an election for a Grand National Assembly be held. The president schedules an election for the Grand National Assembly within three months of the passage of a resolution by the National Assembly. The term of the National Assembly ends with the holding of an election for the Grand National Assembly.

Article 161. The Grand National Assembly may issue rulings on drafts by a majority of two-thirds of all of the national representatives, after three rounds of balloting on different days.

Article 162. The Grand National Assembly may resolve only the constitutional matters for which it was elected. In urgent cases, the Grand National Assembly performs the functions of an ordinary National Assembly. The authority of the Grand National Assembly ends after it has issued its final ruling on the questions for which it was elected. The president then schedules an election in accordance with legal procedures.

Article 163. The legal acts of the Grand National Assembly must be signed and promulgated by its chairman within seven days of their adoption.

Chapter 10. Coat of Arms, Seal, Flag, Anthem, and Capital

Article 164. The coat of arms of the Republic of Bulgaria depicts a gold lion rampant on a dark red shield.

Article 165. The state seal depicts the coat of arms of the Republic of Bulgaria.

Article 166. The flag of the Republic of Bulgaria is a tricolor: white, green, and red stripes placed horizontally, from the top down.

Article 167. The procedure for applying the state seal and raising the national flag is regulated by law.

Article 168. The anthem of the Republic of Bulgaria is the song "Mila Rodino [Dear Homeland]."

Article 169. The city of Sofia is the capital of the Republic of Bulgaria.

Interim and Concluding Provisions

1. The Grand National Assembly dissolves itself following the adoption of the Constitution. The Grand National Assembly functions as a National Assembly until a new National Assembly has been elected. During that time, it passes laws on the elections of a National Assembly, a president, and local self-governing bodies, as well as other laws. The Constitutional Court and the High Judicial Council are established during that time. The national representatives, the president, the vice president, and the members of the Council of Ministers swear the oath stipulated in this Constitution at the first session of the National Assembly after the enactment of the Constitution.
2. Until the Supreme Court of Appeals and the Supreme Administrative Court have been appointed, their authority, as per Article 130, Sentence 3 and Article 147, Sentence 1 of the Constitution, is exercised by the Supreme Court of the Republic of Bulgaria.
3. Provisions of existing laws retain their validity unless they conflict with the Constitution. Provisions of existing laws that were not rescinded as a result of the effect of Article 5, Sentences 4 and 5 of the Constitution are rescinded by the National Assembly within one year of the adoption of the Constitution. Within a period of three years, the National Assembly must pass the laws specifically stipulated in the Constitution.
4. The judicial branch, as defined by the Constitution, is organized after the adoption of the new laws on reorganization and procedures, which must be passed within the time limit set in Item 3, Sentences 2 and 3, immediately above.
5. Judges, prosecutors, and investigators may not be removed from office if, within three months of its establishment, the High Judicial Council has not resolved that they lack the necessary professional qualities.
6. Until a new legislative system governing Bulgarian National Television, Bulgarian National Radio, and the Bulgarian Telegraph Agency has been established, the National Assembly will exercise the authority of the Grand National Assembly in matters pertaining to these national institutions.
7. Elections for National Assembly representatives and local self-governing bodies must be held within three months after the Grand National Assembly has dissolved itself. The dates for the elections are set by the president in accordance with his authority as defined in Article 98, Item 1 of the Constitution. The election for president and vice president must be held within three months after the election of a National Assembly. Pending the election of a president and a vice president, their functions established by this Constitution are performed by the chairman (president) and the vice chairman (vice president).
8. The government continues to exercise its functions in accordance with the present Constitution until a new government has been formed.
9. The present Constitution will be enacted as of the day of its publication in *Durzhaven Vestnik* by the chairman of the Grand National Assembly and will revoke the Constitution of the Republic of Bulgaria adopted on 18 May 1971 (published in

Durzhaven Vestnik No. 39, 1971; amended in No. 6, 1990; amended and supplemented in No. 29, 1990; amended in Nos. 87, 94, and 98, 1990; corrected in No. 98, 1990).

Adopted by the Grand National Assembly on 12 July 1991 and signed by Nikolay Todorov, chairman of the Grand National Assembly. Order of Nikolay Todorov, chairman of the Grand National Assembly, on the promulgation of the Constitution of the Republic of Bulgaria, issued in Sofia on 12 July 1991:

On the basis of Point 9 of the Interim, above, and concluding provisions of the Constitution of the Republic of Bulgaria, adopted on 12 July 1991, I hereby decree that the Constitution of the Republic of Bulgaria, adopted on 12 July 1991 by the Grand National Assembly, be published in *Durzhaven Vestnik*.

CONSTITUTION OF THE CZECH REPUBLIC

AU2412060192 Prague *Hospodarske Noviny* in Czech 21 Dec. 92 pp. 7, 8 [text of the Constitutional Law of the Czech National Council of 16 December 1992 on the Constitution of the Czech Republic]

The Czech National Council passed the following constitutional law:

Preamble

We, citizens of the Czech Republic in Bohemia, Moravia, and Silesia, at the time of the restoration of an independent Czech state, faithful to all the good traditions of the ancient statehood of the Lands of the Czech Crown and of Czechoslovak statehood, determined to build, protect, and develop the Czech Republic in the spirit of the inviolable values of human dignity and freedom, as a homeland to equal, free citizens conscious of their obligations toward others and of their responsibility toward the whole, as a free and democratic state based on respect for human rights and on the principles of a civic society, as an integral part of the family of European and world democracies, resolved to jointly guard and develop the inherited natural, cultural, material, and intellectual wealth, determined to abide by all the tested principles of a law-governed state, adopt through our freely elected representatives the following Constitution of the Czech Republic.

Chapter One: Basic Provisions

Article 1. The Czech Republic is a sovereign, unified, and democratic law-governed state based on respect for the rights and liberties of man and citizen.

Article 2. The people are the source of all state power, which they execute through the medium of the bodies of legislative, executive, and judicial power. A constitutional law may determine when the people execute state power directly. State power serves all citizens and can only be exercised in cases, within the limits, and in ways laid down by law. Every citizen can do what is not forbidden by law and no one must be forced to do what is not laid down by law.

Article 3. The Charter of Fundamental Rights and Freedom is part of the constitutional order of the Czech Republic.

Article 4. Fundamental rights and freedoms are under the protection of judicial power.

Article 5. The political system is based on the free and voluntary inception of political

parties and their free competition respecting basic democratic principles and rejecting violence as a means of enforcing one's interests.

Article 6. Political decisions arise from the will of the majority expressed in free voting. Decisions by the majority provide for the protection of minorities.

Article 7. The state ensures the economical use of natural resources and the protection of the natural wealth.

Article 8. The self-administration of territorial self-administrative entities is guaranteed.

Article 9. The Constitution may be amended or altered only by means of constitutional laws. Any change to the substantial matters of the democratic, law-governed state is inadmissible. The interpretation of legal norms must not authorize the elimination or endangerment of the foundations of the democratic state.

Article 10. Ratified and promulgated international treaties on human rights and fundamental freedoms to which the Czech Republic is party are directly binding and take precedence over the law.

Article 11. The territory of the Czech Republic represents an indivisible whole, the borders of which may be changed only by means of a constitutional law.

Article 12. The terms of the acquisition and forfeiture of the citizenship of the Czech Republic shall be set out in a law. No one should be deprived of citizenship against his will.

Article 13. The capital of the Czech Republic is Prague.

Article 14. The state symbols of the Czech Republic are the large and small state emblem, the state colors, the state flag, the flag of the president of the republic, the state seal, and the state anthem. The state symbols and their use shall be set out in a law.

Chapter Two: Legislative Power

Article 15. Legislative power in the Czech Republic belongs to parliament. Parliament consists of two chambers—the Chamber of Deputies and the Senate.

Article 16. The Chamber of Deputies has 200 deputies, who are elected for a four-year term. The Senate has 81 senators, who are elected for a six-year term, with one-third of the senators elected every two years.

Article 17. Elections to the two chambers are held within a period starting 30 days before the electoral term expires and ending on the last day of the electoral term. In case of the dissolution of the Chamber of Deputies, elections are held within 60 days after its dissolution.

Article 18. Elections to the Chamber of Deputies take place by secret ballot on the basis of universal, equal, and direct suffrage, according to the principle of proportional representation. Elections to the Senate take place by secret ballot on the basis of universal, equal, and direct suffrage, according to the principle of the majority system. Every citizen of the Czech Republic who has reached the age of 18 has the right to vote.

Article 19. Every citizen of the Czech Republic who has the right to vote and has reached the age of 21 can be elected to the Chamber of Deputies. Every citizen of the

Czech Republic who has the right to vote and has reached the age of 40 can be elected to the Senate. The mandate of the deputy or senator comes into being by his election.

Article 20. Other conditions concerning the exercising of the right to vote, the organization of the elections, and the extent of court review shall be set out in a law.

Article 21. No one must be a member of both chambers of parliament at one and the same time.

Article 22. The execution of the office of the president of the republic, judge, and other offices to be determined by law are incompatible with the post of deputy or senator. The mandate of a deputy or senator who has taken up the post of president of the republic, the post of judge, or another post incompatible with the post of deputy or senator shall be terminated on the day of his assumption of that post.

Article 23. A deputy shall be sworn in at the first meeting of the Chamber of Deputies in which he participates. A senator shall be sworn in at the first meeting of the Senate in which he participates. The oath of a deputy or senator reads: "I pledge loyalty to the Czech Republic. I pledge to observe its Constitution and laws. I swear by my honor that I will carry out my mandate in the interest of all people and according to my best knowledge and conscience."

Article 24. A deputy or senator can surrender his mandate by means of a declaration made in person at a meeting of the chamber of which he is a member. If he is unable to do so owing to grievous circumstances, he shall do so in a manner defined by law.

Article 25. The mandate of a deputy or senator shall expire:

(a) When he refuses to take the oath or takes it with reservations,
(b) When the electoral term expires,
(c) When he surrenders his mandate,
(d) When he ceases to be eligible,
(e) In the case of deputies, when the Chamber of Deputies is dissolved,
(f) When he becomes subject to the incompatibility of posts according to Article 22.

Article 26. Deputies and senators carry out their mandates personally in harmony with their oath and are not bound by any orders in the process.

Article 27. A deputy or senator must not be made criminally liable because of his voting in the Chamber of Deputies or the Senate or their bodies. No criminal proceedings must be initiated against a deputy or senator because of speeches made in the Chamber of Deputies or the Senate or their bodies. A deputy or senator is only subject to the disciplinary authority of the chamber of which he is a member. A deputy or senator who is guilty of a misdemeanor is subject only to the disciplinary authority of the chamber of which he is a member, unless specified otherwise by law. No criminal proceedings must be initiated against a deputy or senator without the consent of the chamber of which he is a member. If the chamber denies its consent, criminal proceedings are ruled out forever. A deputy or senator may be detained only if he has been caught while committing a criminal offense or immediately thereafter. The appropriate authority is obliged to report the detainment without delay to the chairman of the chamber of which the detainee is a member; if the chamber's chairman does not give his consent within 24 hours after detainment to the detainee being handed over to the

court, the appropriate authority is obliged to release him. At its first subsequent meeting the chamber shall decide with final validity on the admissibility of prosecution.

Article 28. A deputy of senator has the right to deny testimony about facts that he learned in conjunction with carrying out his mandate; he has this right even after he ceases to be deputy or senator.

Article 29. The Chamber of Deputies elects and recalls the chairman and deputy chairmen of the Chamber of Deputies. The Senate elects and recalls the chairman and deputy chairmen of the Senate.

Article 30. The Chamber of Deputies may set up an investigating commission to investigate matters of public interest if this is proposed by at least one-fifth of the deputies. The manner of the proceedings before the commission will be set out in a law.

Article 31. The chambers set up committees and commissions as their bodies. The operation of committees and commissions will be regulated by law.

Article 32. A deputy or senator who is a member of the government must not be chairman or deputy chairman of the Chamber of Deputies or Senate, nor must he be a member of parliamentary committees and commissions or of an investigating commission.

Article 33. In the case of the dissolution of the Chamber of Deputies, it is the responsibility of the Senate to adopt legal measures regarding matters that brook no delay and that would otherwise require the passage of a law. It is not, however, the Senate's responsibility to adopt legal measures regarding matters of the Constitution, the state budget, the state closing account, the electoral law, and international treaties according to Article 10. Only the government can propose to the Senate the adoption of a legal measure. A legal measure of the Senate shall be signed by the chairman of the Senate, the president of the republic, and the prime minister; it shall be promulgated in the same way as laws. A legal measure of the Senate must be approved by the Chamber of Deputies at its first meeting. If the Chamber of Deputies does not approve it, the legal measure is deprived of further validity.

Article 34. The chambers' sessions are permanent. Sessions of the Chamber of Deputies are called by the president of the republic so that they start no later than on the 30th day after the elections; if the president fails to call a session by then, the Chamber of Deputies shall meet on the 30th day after the election day. Sessions of a chamber can be interrupted by means of a resolution. The total period of time during which a session may be interrupted must not exceed 120 days a year. While a session is interrupted, the chairman of the Chamber of Deputies or the Senate may call a meeting of the chamber prior to the set date. He will do so whenever requested by the president of the republic, the government, or at least one-fifth of members of the chamber. The session of the Chamber of Deputies ends with the expiry of its electoral term or with its dissolution.

Article 35. The Chamber of Deputies can be dissolved by the president of the republic, if:

(a) The Chamber of Deputies does not pass a vote of confidence in a newly appointed government whose chairman has been appointed by the president of the republic at the proposal of the chairman of the Chamber of Deputies.

(b) The Chamber of Deputies does not decide within three months on a government-sponsored bill, with the discussion of which the government has linked the question of confidence,

(c) The session of the Chamber of Deputies has been interrupted for a period longer than is admissible,

(d) The Chamber of Deputies has not had a quorum for more than three months, even though its session has not been interrupted and even though its meetings have repeatedly been called during this period.

The Chamber of Deputies must not be dissolved within three months prior to the expiry of its electoral term.

Article 36. Meetings of the chambers are public. The public can be excluded only under conditions defined by law.

Article 37. Joint meetings of the chambers are called by the chairman of the Chamber of Deputies. Joint meetings of the chambers are governed by the rules of procedure of the Chamber of Deputies.

Article 38. A member of the government has the right to participate in meetings of both chambers and their committees and commissions. He shall be given an opportunity to speak at any time upon request. A member of the government is obliged to attend personally a meeting of the Chamber of Deputies on the basis of its resolution. This applies also to meetings of a committee, commission, or an investigating commission, at which, however, a member of the government can be represented by his deputy or another government member, unless his personal participation has been expressly requested.

Article 39. The chambers have a quorum if at least one-third of their members are present. The agreement of more than one-half of the deputies or senators present is required for a resolution of the chamber to be approved, unless specified otherwise by this Constitution. The agreement of more than one-half of all deputies and of more than one-half of all senators is required to pass a resolution on the declaration of a state of war and to adopt a resolution expressing agreement with the stay of foreign troops on the territory of the Czech Republic. The agreement of a three-fifths majority of all deputies and of a three-fifths majority of present senators is required to pass a constitutional law and to approve an international treaty according to Article 10.

Article 40. For the electoral law, a law on the principles of procedure and relations between the two chambers and their outward relations, and a law on the rules of procedure of the Senate to be passed, the approval by both the Chamber of Deputies and the Senate is required.

Article 41. Bills are submitted to the Chamber of Deputies. A bill can be tabled by a deputy, a group of deputies, the Senate, the government, or the representative body of a higher territorial self-administrative unit.

Article 42. Bills on the state budget and on the state closing account are tabled by the government. These bills are discussed at a public meeting, and decisions on them are made, only by the Chamber of Deputies.

Article 43. Parliament can decide on the declaration of a state of war if the Czech Republic is attacked or if it must live up to international contractual commitments

concerning joint defense against aggression. The agreement of both chambers is required for armed forces to be sent outside the territory of the Czech Republic.

Article 44. The government has the right to express its opinion on all bills. If the government does not express its opinion within 30 days after the bill has been delivered to it, its opinion on the bill is considered to be positive. The government is authorized to request that the Chamber of Deputies wind up the discussion of a government-sponsored bill within three months after its submission, if the government links this with the request for a vote of confidence.

Article 45. A bill with which the Chamber of Deputies has expressed agreement shall be passed by it onto the Senate without needless delay.

Article 46. The Senate shall discuss the bill and shall pass a resolution on it within 30 days after the bill's delivery to it. By its resolution the Senate shall either approve the bill, reject it, return it to the Chamber of Deputies with proposals for amendments, or express the will not to deal with it. If the Senate does not express its opinion within the deadline specified in Paragraph (1), it is deemed to have adopted the bill.

Article 47. If the Senate rejects a bill, the Chamber of Deputies shall vote on it again. The bill shall be adopted if it is approved by a majority of more than one-half of all deputies. If the Senate returns the bill with proposals for amendments, the Chamber of Deputies shall vote on the bill in the rendition approved by the Senate. The bill shall be adopted by the Chamber of Deputies resolution. If the Chamber of Deputies does not approve a bill in the rendition approved by the Senate, it shall vote anew on the bill in the form in which it had been passed onto the Senate. The bill shall be adopted if it is approved by a majority of more than one-half of all deputies. No proposals for amendments are admissible in the Chamber of Deputies when discussing a bill that has been rejected or returned.

Article 48. If the Senate expresses the will not to deal with a bill, this resolution by the Senate means that the bill has been adopted.

Article 49. International treaties requiring the agreement of parliament shall be approved by parliament in a similar manner as bills. Treaties on human rights and fundamental freedoms, political treaties and economic treaties of a general nature, as well as treaties, whose implementation requires the passage of law, require approval by parliament.

Article 50. The president of the republic has the right to return an adopted law, with the exception of a constitutional law, with an explanation within 15 days after the law was delivered to him. The Chamber of Deputies shall vote anew on a law that has been returned to it. Proposals for amendments are not admissible. If the Chamber of Deputies insists on the returned law by a majority of more than one-half of all deputies, the law shall be promulgated. Otherwise, the law is deemed not to have been adopted.

Article 51. Adopted laws are signed by the chairman of the Chamber of Deputies, the president of the republic, and the prime minister.

Article 52. A law must be promulgated for it to become valid. The manner of promulgation shall be set out in a law. The same applies to international treaties approved by parliament.

Article 53. Every deputy has the right to address an interpellation to the government or its members on matters within their jurisdiction. The government members to whom the interpellation is addressed shall reply to it within 30 days after its submission.

Chapter Three: Executive Power

President of the Republic

Article 54. The president of the republic is the head of state. The president of the republic is elected by parliament at a joint meeting of both chambers. The president of the republic is not accountable for the execution of his post.

Article 55. The president of the republic assumes office by taking his oath. The electoral term of the president of the republic lasts five years and begins on the day of his being sworn in.

Article 56. The election takes place during the last 30 days of the electoral term of the acting president of the republic. If the office of the president of the republic becomes vacant, the election shall take place within 30 days.

Article 57. Any citizen who is eligible for the Senate can be elected president of the republic. No one must be elected for more than two consecutive terms.

Article 58. A candidate for the post of president of the republic can be proposed by a minimum of 10 deputies or 10 senators. A candidate who has received the votes of a majority of more than one-half of all deputies as well as the votes of a majority or more than one-half of all senators shall be elected president of the republic. If no candidate obtains the votes of a majority of more than one-half of all deputies and senators, a second round of the election shall take place within 14 days. The candidate who has received the largest number of votes in the Chamber of Deputies and the candidate who has received the largest number of votes in the Senate shall advance to the second round. If there are several candidates who have received the same highest number of votes in the Chamber of Deputies or several candidates who have received the same highest number of votes in the Senate, the votes cast for them in both chambers shall be added up. The candidate who has reached the highest number of votes in this way shall advance to the second round. The candidate who has received the votes of a majority of more than one-half of the deputies present and the votes of a majority of more than one-half of the senators present shall be elected. If a president for the republic is not elected even in the second round, the third round of the election shall take place within 14 days, in which he shall be elected from among the second-round candidates who receive the votes of a majority of more than one-half of the deputies and senators present. If no president of the republic has been elected even in the third round, new elections shall be held.

Article 59. The president of the republic shall be sworn in by the chairman of the Chamber of Deputies at a joint meeting of both chambers. The oath of the president of the republic reads: "I pledge loyalty to the Czech Republic. I pledge to observe its

Constitution and laws. I swear by my honor that I will discharge my office in the interest of all people and according to my best knowledge and conscience."

Article 60. If the president of the republic refuses to take the oath, or takes it with a reservation, he is deemed not to have been elected.

Article 61. The president of the republic can surrender his office to the hands of the chairman of the Chamber of Deputies.

Article 62. The president of the republic:

(a) Appoints and recalls the prime minister and other members of the government and accepts their resignation, recalls the government and accepts its resignation,

(b) Calls sessions of the Chamber of Deputies,

(c) Dissolves the Chamber of Deputies,

(d) Entrusts to the government whose resignation he has accepted or that he has recalled the provisional execution of government functions until a new government is appointed,

(e) Appoints judges of the Constitutional Court, its chairman, and deputy chairmen,

(f) Appoints the chairman and deputy chairmen of the Supreme Court from among its members,

(g) Remits and lowers penalties meted out by the court; issues orders not to initiate criminal proceedings and, if they have been initiated, issues orders to discontinue them; and nullifies punishments,

(h) Has the right to return an adopted law to parliament, with the exception of constitutional laws,

(i) Signs laws,

(j) Appoints the president and vice president of the Supreme Control Office,

(k) Appoints members of the Banking Council of the Czech National Bank.

Article 63. Furthermore, the president of the republic:

(a) Represents the state to the outside world,

(b) Concludes and ratifies international treaties; he may devolve the conclusion of international treaties to the government or, with the government's approval, to its individual members,

(c) Acts as the supreme commander of the armed forces,

(d) Receives the heads of representative missions,

(e) Accredits and summons heads of representative missions,

(f) Calls elections to the Chamber of Deputies and the Senate,

(g) Appoints and promotes generals,

(h) Awards and confers state distinctions, unless he empowers another body to do so,

(i) Appoints judges,

(j) Has the right to grant amnesty.

If laid down by law, the execution of powers that are not expressly cited in this constitutional law is the responsibility of the president of the republic. Decisions by the president of the republic made in accordance with Items (a) and (b), above, must be cosigned by the prime minister or another member of the government entrusted by him in order to be valid. Responsibility for decisions by the president of the republic

that must be cosigned by the prime minister or another member of the government entrusted by him is borne by that government.

Article 64. The president of the republic has the right to participate in meetings of both chambers of parliament and their committees and commissions. He shall be given an opportunity to speak at any time upon request. The president of the republic has the right to participate in meetings of the government, to request reports from the government and its members, and to discuss with the government or its members matters within their jurisdiction.

Article 65. The president of the republic may not be detained, made criminally liable, or prosecuted for a misdemeanor or another administrative offense. The president of the republic may be prosecuted for high treason before the Constitutional Court on the basis of a lawsuit filed by the Senate. He may be punished by removal from the presidential office and ineligibility to recover the office. Criminal proceedings for criminal offenses committed during the presidential term are ruled out forever.

Article 66. If the office of the president becomes vacant and a new president has not yet been elected or sworn in, or if the president cannot discharge his office for serious reasons and the Chamber of Deputies and the Senate pass a resolution to this effect, the execution of functions under Article 63, Paragraph (10) (a), (b), (c), (d), (e), (h), (i), and (j) and of functions under Article 63, second full sentence is the responsibility of the prime minister. During the period when the prime minister executes the limited functions of the president of the republic, the execution of functions under Article 62 (a), (b), (c), (d), (e), and (k) is the responsibility of the chairman of the Chamber of Deputies; if the office of the president becomes vacant at a time when the Chamber of Deputies is dissolved, the chairman of the Senate is responsible for the execution of these functions.

Government

Article 67. The government is the supreme body of executive power. The government consists of the prime minister, deputy prime ministers, and ministers.

Article 68. The government is accountable to the Chamber of Deputies. The prime minister is appointed by the president of the republic; at the proposal of the prime minister the president then appoints other members of the government and entrusts them with the management of ministries or other offices. Within 30 days of its appointment, the government shall appear before the Chamber of Deputies and shall ask for its vote of confidence. If the newly appointed government does not win confidence in the Chamber of Deputies, the procedure under Paragraphs (2) and (3) shall be followed. If even the government appointed in this way does not win the confidence of the Chamber of Deputies, the president of the republic shall appoint a prime minister at the proposal of the chairman of the Chamber of Deputies. In other cases the president of the republic appoints and recalls at the proposal of the prime minister other members of the government and entrusts them with the management of ministries or other offices.

Article 69. A member of the government is sworn in by the president of the republic. The oath of a member of the government reads: "I pledge loyalty to the Czech Re-

public. I pledge to observe its Constitution and laws and to apply them in practice. I swear by my honor that I shall discharge my office conscientiously and shall not abuse my position."

Article 70. A member of government may not engage in activities the nature of which is in conflict with the execution of his office. Details shall be set out in a separate law.

Article 71. The government may move that the Chamber of Deputies pass a vote of confidence in it.

Article 72. The Chamber of Deputies can pass a vote of no-confidence in the government. The motion to pass a vote of no-confidence in the government shall be discussed by the Chamber of Deputies only if it is submitted in writing by a minimum of 50 deputies. The agreement of a majority of more than one-half of all deputies is needed for the motion to be adopted.

Article 73. The prime minister submits his resignation to the president of the republic. Other members of the government submit their resignation to the president of the republic through the medium of the prime minister. The government shall submit its resignation if the Chamber of Deputies turns down its request for a vote of confidence or if it passes a vote of no-confidence in it. The government shall submit its resignation after each constituent meeting of a newly elected Chamber of Deputies. If the government submits its resignation in accordance with Sentence 2, above, the president of the republic shall accept it.

Article 74. The president of the republic shall recall a member of government if proposed by the prime minister.

Article 75. The president of the republic shall recall a government that does not submit its resignation, even though it is obliged to do so.

Article 76. The government makes decisions as a body. The agreement of a majority of more than one-half of all government members is needed to pass a government resolution.

Article 77. The prime minister organizes the activity of the government, chairs its meetings, acts on its behalf, and carries out other activities that are entrusted to him by the Constitution or other laws. The prime minister is represented by the deputy prime minister or another member of the government charged with representing him.

Article 78. The government is authorized to issue decrees to execute laws within their limits. Government decrees are signed by the prime minister and the appropriate member of government.

Article 79. Ministries and other administrative offices may be established, and the sphere of their authority defined, only by means of a law. The legal standing of state employees in ministries and other administrative offices is regulated by law. Ministries, other administrative offices, and territorial self-administration bodies may issue legal regulations on the basis and within the limits of law, if empowered to do so by law.

Article 80. The state board of representatives [statni zastupitelstvi] represents the public prosecutor in criminal proceedings; it also discharges other tasks if set out in a law. The position and sphere of authority of the state board of representatives shall be set out in a law.

Chapter Four: Judicial Power

Article 81. Judicial power is executed by independent courts in the name of the republic.

Article 82. Judges are independent in executing their office. Their impartiality may not be endangered by anyone. A judge may not be recalled or transferred to another court against his will; exceptions arising, in particular, from disciplinary accountability shall be set out in a law. The office of judge is not compatible with the office of the president of the republic, member of parliament, or any other office in state administration; a law shall specify which other activities are incompatible with executing the office of a judge.

Constitutional Court

Article 83. The Constitutional Court is a judicial body charged with protecting constitutionality.

Article 84. The Constitutional Court consists of 15 judges appointed for a period of ten years. The Constitutional Court judges are appointed by the president of the republic upon approval by the Senate. Any citizen with a clean record, who is a law school graduate with at least 10 years of legal practice, and eligible for the Senate, may be appointed a Constitutional Court judge.

Article 85. A Constitutional Court judge assumes his duties by being sworn in by the president. The text of the oath of a Constitutional Court judge is as follows: "I pledge on my honor and conscience to protect the inviolability of the natural rights of man and the rights of the citizen, to follow the constitutional laws, and make decisions to the best of my knowledge independently and impartially." If a judge refuses to make this pledge, or makes the pledge with an exception, his appointment is considered null and void.

Article 86. Constitutional Court judges may not be legally prosecuted without the approval of the Senate. If the Senate refuses to give its approval, any prosecution is ruled out forever. A Constitutional Court judge may only be arrested if he is apprehended as he commits a crime or immediately thereafter. The appropriate body must immediately report the arrest to the chairman of the Senate. If the chairman of the Senate does not agree to the transfer of the detainee to a court within 24 hours, the aforementioned body must release him. The Senate shall give a definitive ruling on the propriety of criminal prosecution at its next meeting. A Constitutional Court judge has the right to refuse testimony on information he has acquired during the execution of his office, even after he ceases to be a Constitutional Court judge.

Article 87. The Constitutional Court decides on

(a) Abrogation of laws or their specific stipulations if they contradict constitutional law or an international treaty according to Article 10,

(b) Abrogation of other legal regulations or their specific provisions if they contradict constitutional law, or an international treaty according to Article 10,

(c) Constitutional complaints by bodies of territorial self-administration against illegal intervention by the state,

(d) Constitutional complaints against decisions that have the power of law and other

interventions by the bodies of public power that violate the constitutionally guaranteed basic rights and freedoms,

(e) Amendments to a decision regarding the verification of the election of a deputy or a senator,

(f) Doubts regarding election eligibility and conflict of interest in the post of a deputy or a senator in accordance with Article 25,

(g) Constitutional complaints by the Senate against the president of the republic in accordance with Article 65, Sentence 2,

(h) A proposal by the president of the republic to quash Chamber of Deputies and Senate resolutions in accordance with Article 66,

(i) Measures necessary to implement a decision by an international court that is binding for the Czech Republic and cannot otherwise be implemented,

(j) Whether a decision on the dissolution of a political party or other decision concerning the activity of a political party accords with constitutional or other laws,

(k) Disputes regarding the powers of state bodies and territorial self-administration bodies, if they do not fall under the jurisdiction of another body by law.

The law may provide that the Supreme Administrative Court rather than the Constitutional Court shall decide on:

(a) The abrogation of legal regulations or specific provisions of them if they contradict the law,

(b) Disputes concerning the power of state bodies and territorial self-administration bodies if they do not fall under the jurisdiction of another body by law.

Article 88. The law defines who is authorized to propose to initiate legal proceedings and other regulations concerning proceedings before the Constitutional Court, and under what circumstances. The Constitutional Court judges are limited in their decision only by constitutional laws and international treaties in accordance with Article 10 and the law specified immediately above.

Article 89. A decision by the Constitutional Court may be executed as soon as it is announced in the manner determined by law, unless the Constitutional Court decides otherwise. The executable decisions by the Constitutional Court are binding for all bodies and persons.

Courts

Article 90. Courts are called upon, first and foremost, to provide protection of rights in a manner determined by law. Only the court may decide on guilt and punishment for criminal offenses.

Article 91. The system of courts consists of the Supreme Court, the Supreme Administrative Court, and higher [vrchni], regional, and district courts. A different designation of courts may be specified by law. The sphere of authority and the organization of the courts shall be set out in a law.

Article 92. The Supreme Court is the highest court authority in matters within the jurisdiction of courts, with the exception of matters the decision on which is the responsibility of the Constitutional Court or the Supreme Administrative Court.

Article 93. A judge is appointed to office by the president of the republic for an unlimited period of time. He assumes office by taking an oath. Any citizen with a clean record who is a law school graduate may be appointed judge. Other prerequisites and procedures shall be set out in a law.
Article 94. A law will specify cases in which judges shall decide in a tribunal of judges [senat]; it will also specify the composition of the tribunal. In other cases judges issue rulings as autonomous judges [samosoudci]. A law may specify in which matters other citizens, besides judges, may participate in decision-making by the courts and what form this participation takes.
Article 95. A judge is bound by the law in making a decision; he is authorized to evaluate the compatibility of another legal regulation with the law. If a court comes to the conclusion that the law that is to be used to resolve the matter is inconsistent with a constitutional law, it shall submit the matter to the Constitutional Court.
Article 96. All participants in court proceedings have the same rights before the court. Proceedings before the court are oral and public; exceptions shall be set out in a law. The verdict is always pronounced publicly.

Chapter Five: Supreme Control Office

Article 97. The Supreme Control Office is an independent body. It performs control over the administrations of state property and the fulfillment of the state budget. The president and the vice president of the Supreme Control Office are appointed by the president of the republic at the proposal of the Chamber of Deputies. Its standing, sphere of authority, organizational structure, and other details shall be set out in a separate law.

Chapter Six: Czech National Bank

Article 98. The Czech National Bank is the central bank of the state. Its main objective is to ensure the stability of the currency. Interference in its activity is permissible only on the basis of the law. Its standing, sphere of authority, and other details shall be set out in a separate law.

Chapter Seven: Territorial Self-Administration

Article 99. The Czech Republic is divided into communities that are basic self-administrative units. Lands or regions are higher self-administrative units.
Article 100. Territorial self-administrative units are territorial communities of citizens who are entitled to exercise self-administration. The law determines under which conditions these units are administrative districts. A community is always a part of a higher territorial self-administrative unit. It is possible to establish or terminate a higher territorial self-administrative unit only by a constitutional law.
Article 101. A community is administered independently by a representative body. A

higher territorial self-administrative unit is administered independently by a representative body. Territorial administrative units are public and legal corporations that may own property and have their own budget. The state may intervene in the activity of self-administrative units only if the protection of the law so requires and only in a manner provided by the law.

Article 102. Members of the representative bodies are elected by secret ballot in universal, equal, and direct suffrage. The election term of the representative body is four years. The law determines when and under what conditions new elections to representative bodies are held before the term has elapsed.

Article 103. The representative body of the higher territorial unit decides its own name.

Article 104. The sphere of activity of representative bodies may be defined by law only. The representative body of a community decides in self-administrative matters, if the law does not provide that they are within the jurisdiction of a higher territorial self-administrative body. Representative organs may issue, within their jurisdiction, generally binding decrees.

Article 105. The execution of state administration may be passed to the self-administrative bodies only if the law provides for it.

Chapter Eight: Transitional and Final Provisions

Article 106. On the day this constitution enters into effect, the Czech National Council will become the Chamber of Deputies, whose term will end on 6 June 1996. Until the Senate is elected in accordance with this Constitution, the function of the Senate will be performed by the Temporary Senate. The Temporary Senate will be established in a manner determined by the constitutional law. Until this law becomes effective, the Chamber of Deputies will perform the function of the Senate. The Chamber of Deputies may not be dissolved, as long as it performs the function of the Senate in accordance with Sentence 2, above. Until the law on the rules of procedure in the chambers is passed, the individual chambers will proceed in accordance with the rules of procedure of the Czech National Council.

Article 107. The law on elections to the Senate will determine the manner in which, in the first elections, the one-third of the senators whose term will be a two-year term and the one-third whose term will be a four-year term will be designated. The president will convene the meeting of the Senate so that it can begin on the 30th day after the elections at the latest. Should the president fail to do so, the Senate will meet on the 30th day after the elections.

Article 108. The government of the Czech Republic appointed after the elections in 1992 and performing its duties on the day this Constitution becomes valid will be considered to be a government appointed according to this Constitution.

Article 109. Until the state representative body is established, its function will be performed by the prosecutor-general of the Czech Republic.

Article 110. Until 31 December 1993, military courts are part of the judicial system.

Article 111. Judges of all the courts of the Czech Republic performing their functions on the day this constitution goes into effect are considered to be judges appointed according to the Constitution of the Czech Republic.

Article 112. The constitutional order of the Czech Republic consists of this Constitution, the Charter on Basic Human Rights and Freedoms, constitutional laws adopted in accordance with this Constitution, constitutional laws of the National Council of the Czechoslovak Republic, the Federal Assembly of the Czechoslovak Socialist Republic, and the Czech National Council law dealing with the borders of the Czech Republic, and constitutional laws of the Czech National Council adopted after 6 June 1992. The current Constitution, the Constitutional Law on the Czechoslovak Federation, constitutional laws that altered and amended it, and the constitutional laws of the Czech National Council No. 67/1990 on the state symbols of the Czech Republic are rescinded. Other constitutional laws valid on the territory of the Czech Republic on the day this Constitution becomes effective, have the force of law.

Article 113. This Constitution goes into effect on 1 January 1993.

REPUBLIC OF ESTONIA

CONSTITUTION

Unwavering in their faith and with a steadfast will to secure and develop a state which is established on the inextinguishable right of the Estonian people to national self-determination and which was proclaimed on February 24, 1918, which is founded on freedom, justice and law, which shall serve to protect internal and external peace and provide security for the social progress and general benefit of present and future generations which shall guarantee the preservation of the Estonian nation and its culture throughout the ages, the Estonian people have adopted, on the basis of Article 1 of the Constitution which entered into force in 1938, by Referendum held on June 28, 1992, the following Constitution:

Chapter I: General Provisions

Article 1. Estonia is an independent and sovereign democratic republic, wherein the supreme power of the state is vested with the people. Estonian independence and sovereignty is unlimited by time and inalienable.

Article 2. The land area, territorial waters and airspace are an inseparable and indivisible whole. Estonia is politically a unitary state wherein the division of its territory into administrative units shall be established by law.

Article 3. State power shall be exercised solely on the basis of this Constitution and such laws which are in accordance with the Constitution. Universally recognized principles and norms of international law shall be an inseparable part of the Estonian legal system. Laws shall be published in a prescribed manner. Only laws which have been published shall have obligatory force.

Article 4. The work of the Riigikogu [Estonian Parliament], the President of the Republic, the Government of the Republic and the courts shall be organized on the principle of separate and balanced powers.

Article 5. The natural wealth and resources of Estonia are national assets, which shall be used economically.

Article 6. The official language of Estonia is Estonian.

Article 7. The national colors of Estonia are blue, black and white. The design of the national flag and the national coat-of-arms shall be established by law.

Chapter II: Fundamental Rights, Liberties and Duties

Article 8. Every child with at least one parent who is an Estonian citizen shall have the right, by birth, to Estonian citizenship. Any person who as a minor lost his or her Estonian citizenship shall have the right to have his or her citizenship restored. No person may be deprived of citizenship acquired at birth. No person may be deprived of Estonian citizenship because of his or her beliefs. The conditions and procedures for the acquisition, loss and restoration of Estonian citizenship shall be established by the Law on Citizenship.

Article 9. The rights, liberties and duties of everyone and all persons, as listed in the Constitution, shall be equal for Estonian citizens as well as for citizens of foreign states and stateless persons who are sojourning in Estonia. The rights, liberties and duties listed in the Constitution shall extend to legal persons, to the extent that this is in accordance with the general aims of the legal persons, and with the nature of such rights, liberties and duties.

Article 10. The rights, liberties and duties enumerated in the present chapter shall not preclude other rights, liberties or duties which arise from the spirit of the Constitution or which are in accordance therewith and are compatible with human dignity and the principles of a society based on social justice, democracy and the rule of law.

Article 11. Rights and liberties may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society, and their imposition may not distort the nature of the rights and liberties.

Article 12. All persons shall be equal before the law. No person may be discriminated against on the basis of nationality, race, color, gender, language, origin, religion, political or other beliefs, financial or social status, or other reasons. The incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall equally be prohibited and punishable by law.

Article 13. All persons shall have the right to the protection of the state and of the law. The Estonian state shall also protect its citizens in foreign states. The law shall protect all persons against arbitrary treatment by state authorities.

Article 14. Guaranteeing rights and liberties shall be the duty of the legislative, executive and judicial powers, as well as of local governments.

Article 15. Every person shall have the right to bring a case before the courts if his or her rights or liberties have been violated. Any person whose case is being tried by a court of law shall be entitled to demand the determination of the constitutionality of any relevant law, other legal act or procedure. The courts shall observe the Constitution and shall declare as unconstitutional any law, other legal act or procedure which violates the rights and liberties established in the Constitution or which otherwise contradicts the Constitution.

Article 16. All persons shall have the right to life. This right shall be protected by law. No person shall be arbitrarily deprived of his or her life.

Article 17. No person's honor or reputation may be defamed.

Article 18. No person should be subjected to torture or to cruel or degrading treatment or punishment. No person may be subjected to medical or scientific experiments without his or her freely given consent.

Article 19. All persons shall have the right to free self-realization. In exercising their rights and liberties and in fulfilling their duties, all persons must respect and consider the rights and liberties of others and must observe the law.

Article 20. All persons have the right to liberty and security of person. No person shall be deprived of his or her liberty, except in the cases and in accordance with procedures established by law:

(1) to execute a conviction or a warrant for arrest issued by a court of law;

(2) to ensure the fulfillment of obligations established by law, in cases of contempt of an instruction by a court of law;

(3) to prevent a criminal act or the infringement of an administrative law, or [to] bring a person who is justifiably suspected of such an offense before a competent public authority, or to prevent his or her escape;

(4) to arrange for a minor to be placed under supervision or to bring him or her before a competent public authority, or to deliver such a minor to a competent state agency to determine whether supervision is required;

(5) to place a person suffering from an infectious disease, mental illness, alcoholism or drug abuse in custody, if he or she is dangerous to himself or herself or to others;

(6) to bar illegal immigration into Estonia and to expel a person from Estonia or extradite a person to a foreign state.

No person may be deprived of his or her liberty solely on the grounds of inability to fulfil a contractual obligation.

Article 21. Any person who is deprived of his or her liberty shall be informed promptly, in a language and manner which he or she understands, of the reason of the arrest, and of his or her rights, and shall be given the opportunity to notify his or her immediate family of the arrest. An alleged criminal offender shall also be promptly given the opportunity to choose and confer with legal counsel. The right of an alleged criminal offender to notify his or her immediate family of the arrest may only be restricted in the cases and in accordance with procedures established by law in order to prevent a criminal act or in the interest of establishing facts in criminal proceedings. No person may be held in custody for more than forty-eight hours without specific permission by a court. Such a decision shall be promptly made known to the person in custody, in a language and manner he or she understands.

Article 22. No person should be deemed guilty of a criminal offense before a conviction against that person by a court of law enters into force. No person shall be required during a criminal proceeding to prove his or her own innocence. No person may be compelled to testify against himself or herself, or against any immediate family.

Article 23. No person may be convicted of an act, if that act did not constitute criminal offense under a law which was in force at the time the act was committed. No person may be given a more severe sentence than the one which was applicable at the time the offense was committed. If, subsequent to the offense being committed, a lesser sen-

tence is established by law, this lessor sentence shall be applied. No person may be tried or punished for a second time for an offense for which he or she has already been finally convicted or acquitted in accordance with the law.

Article 24. No person may be transferred against his or her free will from the jurisdiction of a court, which has been established by law, to the jurisdiction of another court. Every person shall have the right to be present during his or her trial. Court sessions shall be public. The court may, in the cases and in accordance with procedures established by law, decide to hold its sessions, wholly or in part, in closed session, for the protection of state or business secrets, public morals or the family life or privacy of persons, or where the interests of a minor, the victim of justice so require. Court judgments shall be made public, unless the interests of a minor, matrimonial partner or a victim require otherwise. Every person shall have the right to appeal a judgment by a court in his or her case to a higher court, in accordance with procedures established by law.

Article 25. All persons shall have the right to compensation for moral or material injuries caused by any person's unlawful action.

Article 26. All persons shall have the right to the inviolability of family life and privacy. State and local government authorities and their officials may not interfere with the family life or privacy of any person, except in the cases and in accordance with procedures established by law for the protection of health or public morals or public order, the rights and liberties of others, or in order to prevent a criminal act or to apprehend a criminal.

Article 27. The family, being fundamental for the preservation and growth of the nation, and as the basis for society, shall be protected by the state. Spouses shall have equal rights. Parents shall have the right and the duty to raise and care for their children. The protection of parents and children shall be established by law. The family shall be responsible for the care of its dependent members.

Article 28. All persons shall have the right to health care. Estonian citizens shall be entitled to state assistance in the case of old age, inability to work, loss of a provider, and need. The categories, extent, and conditions and procedures for assistance shall be established by law. Unless otherwise established by law, this right shall exist equally for Estonian citizens and citizens of foreign states and stateless persons who are sojourning in Estonia. The state shall encourage voluntary and local government social care. Families with many children and the disabled shall be entitled to special care by state and local authorities.

Article 29. Every Estonian citizen shall have the right to freely choose his or her fields of activity, profession and place of work. The conditions and procedures exercising this right may be established by law. Unless otherwise established by law, this right shall exist equally for Estonian citizens and citizens of foreign states and stateless persons who are sojourning in Estonia. No person may be compelled against his or her free will to perform work or service, except service in the Defense Forces or alternative service, work required to prevent the spread of infectious diseases, work required in the event of a natural disaster or a catastrophe, or work which by law is required of a person who

has been adjudged guilty of an offense. The state shall organize vocational education and shall assist in finding work for persons seeking employment. Working conditions shall be under state supervision. Employers and employees may freely join unions and associations. In order to protect their rights and legal interests, unions and associations of employees and employers may use any means which are not prohibited by law. The conditions and procedures for exercising the right to strike shall be established by law. Procedures for settling labor disputes shall be established by law.

Article 30. Positions in state and local government shall be filled by Estonian citizens, in accordance with procedures established by law. In accordance with the law, such positions may in exceptional cases be filled by citizens of foreign states or stateless persons. The law may restrict the right of some categories of civil servants to engage in commercial activities and to form profit-making associations (Article 31), as well as the right to join political parties and some other categories of nonprofit associations (Article 48).

Article 31. Estonian citizens shall have the right to engage in commercial activities and to form profit-making associations and leagues. The law may establish conditions and procedures for the exercise of this right. Unless otherwise established by law, this right shall exist equally for Estonian citizens and citizens of foreign states and stateless persons who are sojourning in Estonia.

Article 32. The property rights of all persons shall be inviolable and shall enjoy equal protection. No property may be expropriated without the consent of the owner, except in cases of public interest, in accordance with procedures established by law, and in exchange for equitable and appropriate compensation. Any person whose property has been expropriated without his or her consent shall have the right to bring a case before the courts and to contest the expropriation, and the nature and amount of compensation. Every person shall have the right to freely possess, use and control his or her property. Restrictions shall be established by law. Property may not be used against the public interest. The law may establish, in the public interest, categories of property in Estonia which are reserved for ownership by Estonian citizens, certain categories of legal persons, local governments or the Estonian state. The right of inheritance shall be guaranteed.

Article 33. The home shall be inviolable. No person may forcibly enter or search any person's dwelling, property or place of work, except in the cases and in accordance with procedures established by law for the protection of public order or health, or the rights and liberties of others, or in order to prevent a criminal act, to apprehend a criminal offender or to establish facts in criminal proceedings.

Article 34. All persons who are legally sojourning in Estonia shall have the right to freedom of movement and choice of residence. The right to freedom of movement may be restricted only in the cases and in accordance with procedures established by law for the protection of the rights and liberties of others, in the interest of national defense, in the event of a natural disaster or a catastrophe, or in order to prevent the spread of infectious diseases, to protect the environment, to avoid leaving a minor or mentally ill person without supervision or to guarantee the holding of criminal proceedings.

Article 35. All persons shall have the right to leave Estonia. This right may be restricted in the cases and in accordance with procedures established by law to guarantee the holding of court or pretrial proceedings or the execution of a court decision.

Article 36. No Estonian citizen may be deported from Estonia or be prevented from settling in Estonia. No Estonian citizen may be extradited to a foreign state, except in the cases prescribed by a foreign treaty, and in accordance with procedures established by the applicable treaty and law. Extradition shall be decided by the Government of the Republic. Anyone whose extradition is sought shall be entitled to contest the extradition in an Estonian court. Every Estonian shall have the right to settle in Estonia.

Article 37. All persons shall have the right to an education. Education shall be compulsory for school-age children to the extent specified by law, and shall be free of school fees in state and local government general education schools. In order to make education available, state and local governments shall maintain the necessary number of educational institutions. As established by law, other educational institutions may be established, including private schools. Parents shall have the final decision in choosing education for their children. All persons shall have the right to instruction in Estonian. Educational institutions established for ethnic minorities shall choose their own language of instruction. The provision of education shall be supervised by the state.

Article 38. Science and the arts, and their instruction, shall be able to exist freely. Universities and research institutions shall be autonomous, within the limits established by law.

Article 39. Authors shall have the inalienable right to their work. The state shall protect intellectual property rights.

Article 40. All persons shall have freedom of conscience, religion and thought. All persons may freely belong to churches or religious associations. There shall be no state church. Every person shall have the freedom to practice his or her religion, either alone or in community with others and in public or in private, unless this endangers public order, health or morals.

Article 41. Every person shall have the right to hold his or her opinions and beliefs. No person may be coerced to change such opinions and beliefs. Beliefs shall not constitute an excuse for a legal offense. No person may be held legally liable because of his or her beliefs.

Article 42. No state or local government authority or their officials may collect or store information on the beliefs of any Estonian citizen against his or her free will.

Article 43. Every person shall be entitled to the secrecy of messages transmitted by or to him or her by post, telegram, telephone or other generally used means. Exceptions may be made on authorization by a court, in the cases and in accordance with procedures established by law in order to prevent a criminal act or to establish facts in criminal proceedings.

Article 44. All persons shall have the right to freely receive information circulated for general use. At the request of an Estonian citizen, and to the extent and in accordance with procedures established by law, all state and local government authorities and their officials shall be obligated to provide information on their work, with the exception of

information which is prohibited from disclosures by law, and information which is intended for internal use only. Every Estonian citizen shall have the right to obtain information about himself or herself held by state and local government authorities and in state and local government archives, in accordance with procedures established by law. This right may be restricted by law in order to protect the rights and liberties of others and the secrecy of a child's parentage, as well as in order to prevent a criminal act, to apprehend a criminal or to establish facts in criminal proceedings. Unless otherwise established by law, the rights specified in sentences 2 and 3 of this Article shall exist equally for Estonian citizens and citizens of foreign states and stateless persons who are sojourning in Estonia.

Article 45. All persons shall have the right to freely circulate ideas, opinions, beliefs and other information by word, print, picture and other means. This right may be restricted by law in order to protect public order or morals, or the rights and liberties, health, honor and reputation of others. The law may likewise restrict this right for state and local government officials, in order to protect state or business secrets or confidential communication, which due to their service the officials have access to, as well as to protect the family life and privacy of others, and in the interests of justice. There shall be no censorship.

Article 46. All persons shall have the right to petition state and local government authorities and their officials with memoranda and applications. Procedures for responding shall be established by law.

Article 47. All persons shall have the right, without prior permission, to peacefully assemble and conduct meetings. This right may be restricted in the cases and in accordance with procedures established by law in order to ensure national security, public order or morals, traffic safety and the safety of the participants in such meetings or to prevent the spread of infectious diseases.

Article 48. All persons shall have the right to form nonprofit associations and leagues. Only Estonian citizens may be members of political parties. The establishment of associations and leagues which possess weapons or are organized in a military fashion or conduct military exercises shall require a prior permit, for which the conditions and procedures of issues shall be established by law. Associations, leagues or political parties whose aims or activities are directed toward the violent change of the Estonian constitutional system or otherwise violate a criminal law shall be prohibited. The termination or suspension of the activities of an association, league or political party, and its penalization may only be invoked by a court, in cases where a law has been violated.

Article 49. Every person shall have the right to preserve his or her ethnic identity.

Article 50. Ethnic minorities shall have the right, in the interests of their national culture, to establish institutions of self-government in accordance with conditions and procedures established by the Law on Cultural Autonomy for Ethnic Minorities.

Article 51. All persons shall have the right to address state or local government authorities and their officials in Estonian, and to receive answers in Estonian. In localities where at least half of the permanent residents belong to an ethnic minority, all persons

shall have the right to receive answers from state and local government authorities and their officials in the language of that ethnic minority.

Article 52. The official language of state and local government shall be Estonian. In localities where the language of the majority of the population is other than Estonian, local government authorities may use the language of the majority of the permanent residents of that locality for internal communication, to the extent and in accordance with procedures established by law. The use of foreign languages, including the languages of ethnic minorities, by state authorities and in court and pretrial proceedings shall be established by law.

Article 53. Every person shall be obligated to preserve the human and natural environment and to compensate for damages caused by him or her to the environment. Procedures for compensation shall be established by law.

Article 54. It shall be the duty of every Estonian citizen to be loyal to the constitutional system and to defend the independence of Estonia. Where no other means are available, every Estonian citizen shall have the right to take spontaneous action against any forcible change of the constitutional system.

Article 55. Citizens of foreign states and stateless persons who are sojourning in Estonia shall be obligated to respect the Estonian constitutional system.

Chapter III: The People

Article 56. The people shall exercise their supreme power through citizens who have the right to vote by:

(1) electing the Riigikogu;

(2) participating in referenda.

Article 57. Every Estonian citizen who has attained eighteen years of age shall have the right to vote. Any Estonian citizen who has been declared mentally incompetent by a court of law shall not have the right to vote.

Article 58. The participation in elections of Estonian citizens who have been convicted by a court of law and who are serving a sentence in a place of detention may be restricted by law.

Chapter IV: The Riigikogu

Article 59. Legislative power shall rest with the Riigikogu.

Article 60. The Riigikogu shall comprise one hundred and one members. Members of the Riigikogu shall be elected in free elections on the principle of proportionality. Elections shall be general, uniform and direct. Voting shall be secret. Every Estonian citizen who is entitled to vote and who has attained twenty-one years of age may be a candidate for the Riigikogu. Regular elections to the Riigikogu shall be held on the first Sunday in March of every fourth year following the year of previous elections to the Riigikogu. Special elections to the Riigikogu shall be held, in cases prescribed by

Articles 89, 97, 105 and 119 of the Constitution, no earlier than twenty, and no later than forty days after elections have been declared. The procedures for the election of the Riigikogu shall be established by the Riigikogu Electoral Law.

Article 61. The authority of the members of the Riigikogu shall commence on the day the results of the elections are announced. The authority of the previous members of the Riigikogu shall terminate from that same day. Before beginning to fulfill his or her duties, a member of the Riigikogu shall take an oath of office affirming his or her loyalty to the Republic of Estonia and its constitutional system.

Article 62. A member of the Riigikogu shall not be tied to his or her mandate, nor be held legally liable for his or her votes or political statements which he or she has made in the National Court or in any of its bodies.

Article 63. A member of the Riigikogu may not hold any other public office. A member of the Riigikogu shall be released from the obligation to serve in the Defense Forces for the duration of his or her term.

Article 64. The authority of a member of the Riigikogu shall be suspended upon his or her appointment as a member of the Government of the Republic, and shall be restored upon his or her being released from the duties as a member of the Government. The authority of a member of the Riigikogu shall prematurely terminate upon:

(1) his or her assumption of another public office;

(2) a conviction against him or her by a court of law entering into force;

(3) his or her resignation, in accordance with procedures established by law;

(4) the National Court pronouncing him or her to be permanently incapable of fulfilling his or her duties;

(5) his or her death.

When the authority of a member of the Riigikogu has been suspended or prematurely terminated, an alternate member shall assume his or her seat, in accordance with procedures established by law. The alternate member shall have all the rights and duties of a member of the Riigikogu. The authority of an alternate member shall terminate when the authority of a member of the Riigikogu is restored.

Article 65. The Riigikogu shall:

(1) adopt laws and resolutions;

(2) decide upon the conducting of referenda;

(3) elect the President of the Republic, in accordance with Article 79 of the Constitution;

(4) ratify and denounce foreign treaties, in accordance with Article 121 of the Constitution;

(5) authorize the candidate for Prime Minister to form the Government of the Republic;

(6) adopt the state budget and approve the report on its implementation;

(7) appoint, on proposal by the President of the Republic, the Chairman of the National Court, the Chairman of the Council of the Bank in Estonia, the Auditor-General, the Legal Chancellor and the Commander or Commander-in-Chief of the Defense Forces;

(8) appoint, on proposal by the Chairman of the National Court, members of the National Court;

(9) appoint members of the Council of the Bank of Estonia;

(10) decide, on proposal by the Government, on the issue of Government loans and the undertaking of other financial obligations by the state;

(11) present statements, declarations and appeals to the Estonian people, foreign states and international organizations;

(12) establish national orders of merit and military and diplomatic ranks;

(13) decide on votes of no-confidence in the Government of the Republic, the Prime Minister or individual ministers;

(14) declare a state of emergency in the state, in accordance with Article 129 of the Constitution;

(15) declare, on proposal by the President of the Republic, a state of war, order mobilization and demobilization;

(16) resolve all national issues which, according to the Constitution, are not to be resolved by the President of the Republic, the Government of the Republic, other state bodies or local governments.

Article 66. The first session of the new complement of the Riigikogu shall take place within ten days of the announcement of the results of the elections to the Riigikogu. The first session of the Riigikogu shall be convened by the President of the Republic.

Article 67. Regular sessions of the Riigikogu shall take place from the second Monday of January to the third Thursday of June, and from the second Monday of September to the third Thursday of December.

Article 68. Extraordinary sessions of the Riigikogu shall be convened by the Chairman of the Riigikogu, on the demand of the President of the Republic, the Government of the Republic or at least one-fifth of the members of the Riigikogu.

Article 69. The Riigikogu shall elect from among its members the Chairman of the Riigikogu and two Deputy Chairmen, who shall direct the work of the Riigikogu, in accordance with the Law on the Riigikogu Standing Orders and the Law on the Riigikogu Procedure.

Article 70. The quorum for the Riigikogu shall be established by the Law on the Riigikogu Standing Orders. In an extraordinary session, the Riigikogu shall have a quorum when more than one-half of its members are present.

Article 71. The Riigikogu shall form committees. Members of the Riigikogu shall have the right to form factions. Procedures for forming committees and factions, and their rights, shall be established by the Law on the Riigikogu Standing Orders.

Article 72. Riigikogu sessions shall be public, unless the Riigikogu, by a majority of two-thirds, decides otherwise. Voting in the Riigikogu shall be public. Voting by secret ballot shall be held in the cases prescribed by the Constitution or the Riigikogu Standing Orders, only in matters concerning the election or appointment of officials.

Article 73. Legal acts of the Riigikogu shall be adopted by a majority of affirmative votes, unless otherwise prescribed by the Constitution.

Article 74. Members of the Riigikogu shall have the right to demand explanations from the Government of the Republic and its members, the Chairman of the Council of the Bank of Estonia, the President of the Bank of Estonia, the Auditor-General, the Legal

Chancellor and the Commander or Commander-in-Chief of the Defense Forces. Demands for explanations must be answered at a session of the Riigikogu within twenty session days.

Article 75. The remuneration of members of the Riigikogu and restrictions on other income shall be established by law, which may be amended for the next complement of the Riigikogu.

Article 76. Every member of the Riigikogu shall enjoy immunity. A member of the Riigikogu may be charged with a criminal offense only on proposal by the Legal Chancellor and with the consent of the majority of the members of the Riigikogu.

Chapter V: The President of the Republic

Article 77. The President of the Republic shall be the Head of State in Estonia.

Article 78. The President of the Republic shall:

(1) represent the Republic of Estonian in international relations;

(2) appoint and recall, on proposal by the Government of the Republic, diplomatic representatives of the Republic of Estonia and accept letters of credence from diplomatic representatives accredited to Estonia;

(3) declare regular elections to the Riigikogu, and, in accordance with Articles 89, 97, 105 and 119 of the Constitution, special elections to the Riigikogu;

(4) convene the new complement of the Riigikogu, in accordance with Article 66 of the Constitution, and shall open its first session;

(5) propose to the Chairman of the Riigikogu to convene an extraordinary session of the Riigikogu, in accordance with Article 68 of the Constitution;

(6) proclaim laws, in accordance with Articles 105 and 107 of the Constitution, and sign instruments of ratification;

(7) issue edicts, in accordance with Articles 109 and 110 of the Constitution;

(8) initiate amendments to the Constitution;

(9) designate the candidate for Prime Minister, in accordance with Article 89 of the Constitution;

(10) appoint and recall members of the Government, in accordance with Articles 89, 90 and 92 of the Constitution;

(11) present proposals to the Riigikogu for appointments to the offices of the Chairman of the National Court, the Chairman of the Council of the Bank of Estonia, the Auditor-General, the Legal Chancellor and the Commander or the Commander-in-Chief of the Defense Forces;

(12) appoint, on proposal by the Council of the Bank of Estonia, the President of the Bank of Estonia;

(13) appoint judges, on proposal by the National Court;

(14) appoint and recall, on proposal by the Government of the Republic and the Commander of the Defense Forces, the leadership of the Defense Forces;

(15) confer civil and military honors and diplomatic ranks;

(16) be the Supreme Commander of Estonia's national defense;

(17) present proposals to the Riigikogu on declarations of a state of war, on orders for mobilization and demobilization and, in accordance with Article 129 of the Constitution, on declarations of a state of emergency;

(18) declare, in the case of armed aggression against Estonia, a state of war; issue orders for mobilization and appoint the Commander-in-Chief of the Defense Forces, in accordance with Article 128 of the Constitution;

(19) pardon convicted offenders at their request by releasing the offender from punishment or by reducing the sentence;

(20) initiate the bringing of criminal charges against the Legal Chancellor, in accordance with Article 145 of the Constitution.

Article 79. The President of the Republic shall be elected by the Riigikogu, or, in the case described below in this Article, by the Electoral Body. The right to present a candidate for President of the Republic shall rest with at least one-fifth of the members of the Riigikogu. Any Estonian citizen by birth, who is at least forty years of age, may be presented as a candidate for President of the Republic. The President of the Republic shall be elected by secret ballot. Each member of the Riigikogu shall have one vote. A candidate who is supported by a two-thirds majority of the members of the Riigikogu shall be considered to be elected. If no candidate receives the required majority, a new round of voting shall be organized on the next day. Before the second round of voting, there shall be a new presentation of candidates. If no candidate receives the required majority in the second round, a third round of voting shall be organized on the same day between the two candidates who received the greatest number of votes in the second round. If the President of the Republic is still not elected in the third round of voting, the Chairman of the Riigikogu shall convene, within one month, an Electoral Body to elect the President of the Republic.

The Electoral Body shall comprise the members of the Riigikogu and representatives of the local government councils. Each local government council shall elect at least one representative, who must be an Estonian citizen, to the Electoral Body. The Riigikogu shall present the two candidates who received the greatest number of votes in the Riigikogu to the Electoral Body as candidates for President. The right to present a candidate for President shall also rest with at least twenty-one members of the Electoral Body. The Electoral Body shall elect the President of the Republic with a majority of those members of the Electoral Body who are present. If no candidate is elected in the first round, a second round of voting shall be organized on the same day between the two candidates who received the greatest number of votes. Further procedures for the election of the President of the Republic shall be established by the Presidential Electoral Law.

Article 80. The President of the Republic shall be elected for a term of five years. No person may be elected to the office of President of the Republic for more than two consecutive terms. The regular election for the President of the Republic shall be held no earlier than sixty and no later than ten days before the end of the term of the President of the Republic.

Article 81. The President of the Republic shall assume office by swearing the following

oath of office to the Estonian people before the Riigikogu: "In assuming the office of President of the Republic, I (given name and surname) hereby solemnly swear that I will steadfastly defend the Constitution and the laws of the Republic of Estonia, exercise the power entrusted to me in a just and equitable manner, and faithfully fulfill my duties to the best of my ability and to the best of my understanding, for the benefit of the Estonian people and the Republic of Estonia."

Article 82. The authority of the President of the Republic shall terminate upon:

(1) his or her resignation from office;

(2) a conviction by a court of law against him or her entering into force;

(3) his or her death;

(4) the assumption of office of a new President of the Republic.

Article 83. If the President of the Republic, according to a resolution by the Riigikogu, is continuously unable to fulfill his or her duties, or if he or she is unable to fulfill them temporarily, in the cases specified by law, or if his or her authority has terminated prematurely, his or her duties shall temporarily be transferred to the Chairman of the Riigikogu. During the period when the Chairman of the Riigikogu is fulfilling the duties of the President of the Republic, his or her authority as a member of the Riigikogu shall be suspended. The Chairman of the Riigikogu as acting President of the Republic shall not have the right, without the consent of the National Court, to declare special elections to the Riigikogu or to refuse to proclaim laws. If the President of the Republic is unable to fulfill his or her duties for more than three consecutive months, or if his or her authority has terminated prematurely, the Riigikogu shall elect a new President of the Republic within fourteen days, in accordance with Article 79 of the Constitution.

Article 84. Upon assuming office, the authority and duties of the President of the Republic in all elected and appointed offices shall terminate, and he or she shall suspend his or her membership in political parties for the duration of his or her term of office.

Article 85. The President of the Republic may be charged with a criminal offense only on proposal by the Legal Chancellor and with the consent of the majority of the members of the Riigikogu.

Chapter VI: The Government of the Republic

Article 86. Executive power shall rest with the Government of the Republic.

Article 87. The Government of the Republic shall:

(1) implement domestic and foreign policies;

(2) direct and coordinate the work of government institutions;

(3) organize the implementation of legislation, the resolutions of the Riigikogu, and the edicts of the President of the Republic;

(4) submit draft laws to the Riigikogu, as well as foreign treaties for ratification or denunciation;

(5) prepare a draft of the state budget and present it to the Riigikogu, administer the

implementation of the state budget, and present a report on the implementation of the state budget to the Riigikogu;

(6) issue orders and regulations for fulfillment, in accordance with the law;

(7) organize relations with foreign states;

(8) declare a state of emergency throughout the state or in parts thereof, in the event of a natural disaster or a catastrophe or in order to impede the spread of infectious diseases;

(9) fulfill other tasks which have been placed within its authority by the Constitution and the law.

Article 88. The Government of the Republic shall comprise the Prime Minister and other ministers.

Article 89. The President of the Republic, within fourteen days after the Government of the Republic has resigned, shall designate a candidate for Prime Minister, who shall be tasked with forming a new government. The candidate for Prime Minister shall report to the Riigikogu, within fourteen days of being assigned the task of forming a government, the bases for the formation of the new government, after which the Riigikogu shall decide, without negotiation and by an open vote, on giving the candidate for Prime Minister the authority to form a government. The candidate for Prime Minister who has received authority from the Riigikogu to form a government, shall present, within seven days, the composition of the government to the President of the Republic, who shall appoint the government within three days.

If the candidate for Prime Minister, nominated by the President of the Republic, does not receive the majority of affirmative votes in the Riigikogu, or is unable or declines to form a government, the President of the Republic shall have the right to present another candidate for Prime Minister within seven days. If the President of the Republic does not or declines to present another candidate for Prime Minister within seven days, or if this candidate is unable to obtain authority from the Riigikogu, in accordance with the conditions and time restraints in sentences 2 and 3 of this Article, or is unable or declines to form a government, the right to present a candidate for Prime Minister shall be transferred to the Riigikogu. The Riigikogu shall present a candidate for Prime Minister, who shall present the composition of the government to the President of the Republic. If the composition of the government has not been presented to the President of the Republic within fourteen days from the time the right to present a candidate for Prime Minister is transferred to the Riigikogu, the President of the Republic shall declare special elections to the Riigikogu.

Article 90. Changes to the composition of those appointed to the Government of the Republic shall be made by the President of the Republic, on proposal by the Prime Minister.

Article 91. The Government shall assume office by swearing an oath of office before the Riigikogu.

Article 92. The Government of the Republic will resign upon:

(1) the convention of the new complement of the Riigikogu;

(2) the resignation or death of the Prime Minister;

(3) the expression of no-confidence in the Government or the Prime Minister by the Riigikogu.

The President of the Republic shall dismiss the Government of the Republic when the new Government assumes office.

Article 93. The Prime Minister shall appoint two ministers who shall have the right to substitute for the Prime Minister during his or her absence. The procedures for substitution shall be established by the Prime Minister.

Article 94. Appropriate ministries shall be established in accordance with the law, for the purpose of executing particular functions of government. A minister shall head a ministry, shall organize the handling of issues which belong to the sphere of activity of the ministry, shall issue orders and directives to be fulfilled, on the basis of the law, and shall fulfill other duties which have been imposed, on the basis and in accordance with procedures established by law. If a minister is temporarily unable to fulfill his or her duties, due to illness or other hindrances, the Prime Minister shall transfer the minister's duties to another minister for that time period. The President of the Republic may appoint, on proposal by the Prime Minister, other ministers who do not head ministries.

Article 95. The State Chancellery shall be within the Government, and shall be headed by the State Secretary. The State Secretary shall be appointed and recalled by the Prime Minister. The State Secretary shall participate in Government sessions with the right to speak. The State Secretary, in heading the State Chancellery, shall have the same rights which are specified by law for a minister in heading a ministry.

Article 96. Sessions of the Government of the Republic shall be closed, unless the Government decides otherwise. The Government shall make decisions on proposal by the Prime Minister or by the appropriate minister. Government orders shall have force when they carry the signatures of the Prime Minister, the appropriate minister and the State Secretary.

Article 97. The Riigikogu may express no-confidence in either the Government of the Republic, the Prime Minister or a minister by a resolution adopted by the majority of the members of the Riigikogu. The issue of no-confidence may be initiated by at least one-fifth of the members of the Riigikogu by submitting a written motion at a session of the Riigikogu. The issue of expressing no-confidence may come up for resolution no earlier than two days after it is submitted, unless the Government demands speedier resolution.

In the case of no-confidence being expressed in the Government or the Prime Minister, the President of the Republic may declare special elections to the Riigikogu, on proposal by the Government, within three days. In the case of no-confidence being expressed in a minister, the Chairman of the Riigikogu shall notify the President of the Republic, who shall recall the minister from office. The expression of no-confidence on the same grounds may be reinitiated no earlier than three months after the previous no-confidence vote.

Article 98. The Government of the Republic may tie the adoption of a draft, which it

has presented to the Riigikogu, with the issue of no-confidence. Voting may take place no earlier than two days after the draft is tied with the issue of no-confidence. If the Riigikogu rejects the draft, the Government shall resign.

Article 99. Members of the Government of the Republic may not hold any other public office nor belong to the leadership or council of a commercial enterprise.

Article 100. Members of the Government of the Republic may participate, with the right to speak, in sessions of the Riigikogu and of its committees.

Article 101. A member of the Government of the Republic may be charged with a criminal offense only on proposal by the Legal Chancellor and with the consent of the majority of the members of the Riigikogu. The authority of a member of the Government shall terminate upon a conviction by a court of law against him or her entering into force.

Chapter VII: Legislation

Article 102. Laws shall be adopted in accordance with the Constitution.

Article 103. The right to initiate laws shall rest with:

(1) members of the Riigikogu;

(2) factions of the Riigikogu;

(3) Riigikogu committees;

(4) the Government of the Republic;

(5) the President of the Republic, for amendments to the Constitution.

The Riigikogu shall have the right, on the basis of a resolution adopted by a majority of its members, to propose to the Government of the Republic that it initiate a draft desired by the Riigikogu.

Article 104. Procedures for the adoption of laws shall be established by the Law on the Riigikogu Standing Orders. The following laws may be adopted or amended only by a majority of the members of the Riigikogu:

(1) Law on Citizenship;

(2) Riigikogu Electoral Law;

(3) Presidential Electoral Law;

(4) Local Government Electoral Law;

(5) Law on Referendum;

(6) Law on the Riigikogu Standing Orders and Law on Riigikogu Procedure;

(7) Law on the Remuneration of the President of the Republic and the Members of the Riigikogu;

(8) Law on the Government of the Republic;

(9) Law on Court Proceedings Against the President of the Republic and Members of the Government;

(10) Law on Cultural Autonomy for Ethnic Minorities;

(11) Law on the State Budget;

(12) Law on the Bank of Estonia;

(13) Law on the State Audit Office;

(14) Law on the Organization of the Courts and Law on Court Procedure;
(15) Laws pertaining to foreign and domestic loans, and state financial obligations;
(16) Law on a State of Emergency;
(17) Peacetime National Defense Law and Wartime National Defense Law.

Article 105. The Riigikogu shall have the right to put draft laws or other national issues to a referendum. The decision of the people shall be determined by the majority of those who participate in the referendum. A law which has been adopted by referendum shall be immediately proclaimed by the President of the Republic. The referendum decision shall be binding on all state bodies. If a draft law which has been put to referendum does not receive a majority of affirmative votes, the President of the Republic shall declare special elections to the Riigikogu.

Article 106. Issues related to the budget, taxes, the financial obligations of the state, the ratification and denouncement of foreign treaties, and the enactment and termination of a state of emergency may not be put to referendum. Procedures for referenda shall be established by the Law on Referenda.

Article 107. Laws shall be proclaimed by the President of the Republic. The President of the Republic shall have the right to refuse to proclaim a law adopted by the Riigikogu, and to return the law to the Riigikogu for debate and decision, within fourteen days of receiving it, together with the reasons for its rejection. If the Riigikogu readopts a law which has been returned by the President of the Republic, without amendments, the President of the Republic shall proclaim the law or shall propose to the National Court that it declare the law to be unconstitutional. If the National Court declares the law to be in accordance with the Constitution, the President of the Republic shall proclaim the law.

Article 108. A law shall enter into force on the tenth day after its publication in the *Riigi Teataja,* unless the law itself establishes otherwise.

Article 109. If the Riigikogu is unable to convene, the President of the Republic shall have the right, in urgent matters of national interest, to issue edicts which shall have the force of law, and which shall bear the cosignatures of the Chairman of the Riigikogu and the Prime Minister. When the Riigikogu convenes, the President of the Republic shall present such edicts to the Riigikogu, which shall immediately adopt a law either confirming or repealing the edict.

Article 110. Neither the Constitution, the laws listed in Article 104 of the Constitution, nor laws which establish state taxes or the state budget can be enacted, amended or repealed by edicts issued by the President of the Republic.

Chapter VIII: Finance and the State Budget

Article 111. The sole right to issue currency in Estonia shall rest with the Bank of Estonia. The Bank of Estonia shall organize currency circulation, and shall promote the stability of a solid national currency.

Article 112. The Bank of Estonia shall operate in accordance with the law, and shall report to the Riigikogu.

Article 113. State taxes, fees, levies, penalties and compulsory insurance payments shall be established by law.

Article 114. Procedures for the possession, use and control of state assets shall be established by law.

Article 115. The Riigikogu shall adopt, as a law, a budget for all state incomes and expenditures for each year. The Government of the Republic shall present a draft state budget to the Riigikogu no later than three months before the beginning of the budget year. On proposal by the Government, the Riigikogu may adopt a supplementary budget during the budget year.

Article 116. Proposed amendments to the state budget or to its draft, which require a decrease in incomes, an increase of expenditures, or a redistribution of expenditures, as prescribed in the state budget or in its draft, must be accompanied by the necessary financial calculations, prepared by the proponents of such amendments, which indicate the sources of income to cover the expenditures. The Riigikogu may not eliminate or reduce in the state budget or in its draft those expenditures which have been prescribed by other laws.

Article 117. The procedures for the preparation and adoption of the state budget shall be established by law.

Article 118. The state budget adopted by the Riigikogu shall enter into force from the beginning of the budget year. If the Riigikogu does not adopt the state budget by the beginning of the budget year, it shall be permitted to make expenditures each month up to one-twelfth of the expenditures of the previous budget year.

Article 119. If the Riigikogu has not adopted the state budget within two months from the beginning of the budget year, the President of the Republic shall declare special elections to the Riigikogu.

Chapter IX: Foreign Relations and Foreign Treaties

Article 120. Procedures for the relations of the Republic of Estonia with other states and with international organizations shall be established by law.

Article 121. The Riigikogu shall ratify and denounce treaties of the Republic of Estonia:

(1) which amend state borders;

(2) which through their implementation require the adoption, amendment or voidance of Estonian laws;

(3) by which the Republic of Estonia joins international organizations or leagues;

(4) by which the Republic of Estonia assumes military or financial obligations;

(5) in which ratification is prescribed.

Article 122. The land border of Estonia shall be established by the Tartu Peace Treaty of February 2, 1920, and other interstate border treaties. The sea and air borders of Estonia shall be established on the basis of international conventions. A two-thirds majority of the members of the Riigikogu shall be mandatory for the ratification of treaties which amend Estonia's state borders.

Article 123. The Republic of Estonia shall not conclude foreign treaties which contradict the Constitution. If Estonian laws or other acts contradict foreign treaties ratified by the Riigikogu, the provisions of the foreign treaty shall be applied.

Chapter X: National Defense

Article 124. Estonian citizens shall be obligated to participate in national defense, in accordance with the bases and procedures established by law. Any person who refuses service in the Defense Forces for religious or ethical reasons shall be obligated to participate in alternative service, in accordance with procedures established by law. Unless the law, considering the special interests of the service, prescribes otherwise, persons in the Defense Forces or in alternative service shall have all constitutional rights, liberties and duties. The rights and liberties prescribed in [sentences 3 and 4 of] Article 8, Articles 11–18, [item 3 of] Article 20, Articles 21–28, Article 32, Article 33, Articles 36–43, sentences 1 and 2 of Article 44 and Articles 49–51 of the Constitution may not be restricted. The legal status of persons in the Defense Forces and in alternative service shall be established by law.

Article 125. A person in active service may not hold elected or appointed office nor participate in the activities of any political party.

Article 126. The organization of national defense shall be established by the Peacetime National Defense Law and the Wartime National Defense Law. The organization of the Estonian Defense Forces and national defense organizations shall be established by law.

Article 127. The Supreme Commander of national defense shall be the President of the Republic. The National Defense Council shall be an advisory body for the President of the Republic, and its composition and tasks shall be established by law. The Estonian Defense Forces and national defense organizations shall be headed by the Commander of the Defense Forces in peacetime, and the Commander-in-Chief of the Defense Forces during a state of war. The Commander and Commander-in-Chief of the Defense Forces shall be appointed and recalled by the Riigikogu, on proposal by the President of the Republic.

Article 128. The Riigikogu shall declare, on proposal by the President of the Republic, a state of war, order mobilization and demobilization, and shall decide on the utilization of the Defense Forces to fulfill the international obligations of the Estonian state. In the case of aggression directed against the Republic of Estonia, the President of the Republic shall declare a state of war and order mobilization, and shall appoint the Commander-in-Chief of the Defense Forces, without waiting for a resolution to be adopted by the Riigikogu.

Article 129. In the case of a threat to the Estonian Constitutional system, the Riigikogu may declare, on proposal by the President of the Republic or the Government of the Republic and with the support of the majority of its members, a state of emergency in the whole state, with a duration of no longer than three months. Regulations for a state of emergency shall be established by law.

Article 130. During a state of emergency or a state of war, the rights and liberties of persons may be restricted, and obligations placed upon them, in the interests of national security and public order, in the cases and in accordance with procedures prescribed by law. The rights and liberties prescribed in Article 8, Articles 11–18, item 3 of Article 20, Article 22, Article 23, sentences 2 and 4 of Article 24, Article 25, Article 27, Article 28, [sentence 1 of] Article 51 of the Constitution may not be restricted.

Article 131. During a state of emergency or a state of war, there shall be no elections to the Riigikogu, for the President of the Republic or to the representative bodies of local governments, nor shall their authority be terminated. The authority of the Riigikogu, the President of the Republic, and the representative bodies of local governments shall be extended if they should terminate during a state of emergency or a state of war, or within three months from the termination of a state of emergency or of a state of war. In these cases, new elections shall be declared within three months from the termination of a state of emergency or of a state of war.

Chapter XI: The State Audit Office

Article 132. The State Audit Office shall be an independent state institution with responsibility for economic control.

Article 133. The State Audit Office shall supervise:

(1) the economic activity of state institutions, state enterprises and other state organizations;

(2) the use and preservation of state assets;

(3) the use and control of state assets which have been transferred into the possession of local governments;

(4) the economic activity of enterprises in which the state holds more than one-half of the votes determined by the shares or stocks, or whose loans or contractual obligations are guaranteed by the state.

Article 134. The State Audit Office shall be headed by the Auditor-General, who shall be appointed and recalled by the Riigikogu, on proposal by the President of the Republic. The term of office for the Auditor-General shall be five years.

Article 135. The Auditor-General shall present an annual report on the use and preservation of state assets during the previous budget year to the Riigikogu at the time of the debate in the Riigikogu on the report of the implementation of the state budget.

Article 136. The Auditor-General shall have the right to participate in sessions of the Government of the Republic, with the right to speak on issues related to his or her duties. The Auditor-General, in heading his or her office, shall have the same rights which are specified by law for a minister in heading a ministry.

Article 137. The organization of the State Audit Office shall be established by law.

Article 138. The Auditor-General may be charged with a criminal offense only on proposal by the Legal Chancellor and with the consent of the majority of the members of the Riigikogu.

Chapter XII: The Legal Chancellor

Article 139. The Legal Chancellor shall be, in conducting his or her work, an independent official who shall monitor whether the legislative acts adopted by the state legislature and executive and by local governments are in accordance with the Constitution and the law. The Legal Chancellor shall analyze proposals made to him or her for amending laws and adopting new laws, as well as for the work of government institutions, and, if necessary, shall present a report to the Riigikogu. The Legal Chancellor shall, in the cases prescribed in Articles 76, 85, 101, 138 and 153 of the Constitution, propose to the Riigikogu that criminal charges be brought against a member of the Riigikogu, the President of the Republic, a member of the Government of the Republic, the Auditor-General, the Chairman of the National Court or a member of the National Court.

Article 140. The Legal Chancellor shall be appointed by the Riigikogu, on proposal by the President of the Republic, for a term of seven years. The Legal Chancellor may be removed from office only by a court decision.

Article 141. The Legal Chancellor, in heading his or her office, shall have the same rights which are specified by law for a minister in heading a ministry. The Legal Chancellor shall have the right to participate in sessions of the Riigikogu and of the Government of the Republic, with the right to speak.

Article 142. If the Legal Chancellor deems that a legislative act adopted by the state legislature or executive or by a local government contradicts the Constitution or the law, he or she shall propose to the body which has adopted that act that it bring the act into accordance with the Constitution or the law within twenty days. If the act is not brought into accordance with the Constitution or the law within twenty days, the Legal Chancellor shall propose to the National Court that the act be declared null and void.

Article 143. The Legal Chancellor shall present an annual report to the Riigikogu on whether the legislative acts adopted by the state legislature and executive and by local governments are in accordance with the Constitution and the law.

Article 144. The legal status of the Legal Chancellor and the organization of his or her office shall be established by law.

Article 145. The Legal Chancellor may be charged with a criminal offense only on proposal by the President of the Republic and with the consent of the majority of the members of the Riigikogu.

Chapter XIII: The Courts

Article 146. Justice shall be administered only by the courts. The courts shall be independent in their work and shall administer justice in accordance with the Constitution and the law.

Article 147. Judges shall be appointed for life. The bases and procedures for recalling judges shall be established by law. Judges may be recalled only by a court decision.

Judges may not hold any other elected or appointed office, except in the cases prescribed by law. Guarantees for the independence of judges and the legal status of judges shall be established by law.

Article 148. The court system shall comprise:

(1) county and city courts, as well as administrative courts;

(2) district courts;

(3) the National Court.

The creation of special courts for some categories of court cases shall be established by law. The establishment of emergency courts shall be prohibited.

Article 149. County and city courts, as well as administrative courts shall be courts of first instance. District courts shall be courts of appeal and shall review the judgments of the courts of first instance on appeal. The National Court shall be the highest court in the land and shall review appellate court judgments on appeal. The National Court shall also be the court for constitutional review. The court system and court procedure shall be established by law.

Article 150. The Chairman of the National Court shall be appointed by the Riigikogu, on proposal by the President of the Republic. Members of the National Court shall be appointed by the Riigikogu, on proposal by the Chairman of the National Court. Other judges shall be appointed by the President of the Republic, on proposal by the National Court.

Article 151. The organization of representation, defense, state prosecution and the supervision of legality in court proceedings shall be established by law.

Article 152. If any law or other legal act contradicts the Constitution, it shall not be applied by the courts in trying any case. If any law or other legal act contradicts the provisions and spirit of the Constitution, it shall be declared null and void by the National Court.

Article 153. A judge may be charged with a criminal offense during his or her term of office only on proposal by the National Court and with the consent of the President of the Republic. The Chairman of the National Court and its members may be charged with a criminal offense only on proposal by the Legal Chancellor and with the consent of the majority of the members of the Riigikogu.

Chapter XIV: Local Government

Article 154. All local issues shall be resolved and regulated by local governments, which shall operate independently in accordance with the law. Obligations may be imposed upon local governments only in accordance with the law or with the agreement of the local government. Expenditures related to the obligations imposed on local governments by law shall be funded within the state budget.

Article 155. The units of local government shall be townships and towns. Other units of local government may be formed in accordance with the bases and procedures established by law.

Article 156. The representative body of local governments shall be the council, which

shall be elected in free elections for a term of three years. The elections shall be general, uniform and direct. Voting shall be secret. In the elections to the local government council, all persons who have attained the age of eighteen years and who reside permanently on the territory of that local government unit shall have the right to vote, in accordance with conditions prescribed by law.

Article 157. Local governments shall have independent budgets, for which the bases of formation and procedures shall be established by law. Local governments shall have the right, in accordance with the law, to impose and collect taxes and to impose fees.

Article 158. The borders of local government units may not be amended without taking into consideration the opinion of the respective local governments.

Article 159. Local governments shall have the right to form leagues and joint institutions together with other local governments.

Article 160. The organization of local governments and the supervision of their work shall be established by law.

Chapter XV: Amendments to the Constitution

Article 161. The right to initiate amendments to the Constitution shall rest with at least one-fifth of the members of the Riigikogu and with the President of the Republic. Amendments to the Constitution may not be initiated, nor the Constitution amended, during a state of emergency or a state of war.

Article 162. Chapter I "General Provisions" and Chapter V "Amendments to the Constitution" of the Constitution may be amended only by referendum.

Article 163. The Constitution may be amended by a law which is adopted by:

(1) referendum;

(2) Riigikogu during two successive sessions;

(3) the Riigikogu, in matters of urgency.

A draft law to amend the Constitution shall be debated during three readings in the Riigikogu, whereby the interval between the first and second readings shall be at least three months, and the interval between the second and third readings shall be at least one month. The manner in which the Constitution is amended shall be decided at the third reading.

Article 164. In order to put a draft law to amend the Constitution to a vote by referendum, the approval of a three-fifths majority of the members of the Riigikogu shall be mandatory. The referendum shall be held no earlier than three months from the time such a resolution is adopted in the Riigikogu.

Article 165. In order to amend the Constitution during two successive sessions of the Riigikogu, the draft law to amend the Constitution must receive the support of the majority of the members of the Riigikogu. If the next complement of the Riigikogu adopts the draft which received the support of the majority of the previous complement, without amendments, omits first reading and with a three-fifths majority of its members, the law to amend the Constitution shall be adopted.

Article 166. A proposal to consider a draft law to amend the Constitution as a matter of

urgency shall be adopted by the Riigikogu by a four-fifths majority. In such a case, the law to amend the Constitution shall be adopted by a two-thirds majority of the members of the Riigikogu.

Article 167. The law to amend the Constitution shall be proclaimed by the President of the Republic and shall enter into force on the date established by the same law, but not earlier than three months after it has been proclaimed.

Article 168. An amendment to the Constitution regarding the same issue may not be reinitiated within one year from the time the corresponding draft is rejected by referendum or by the Riigikogu.

LAW ON THE APPLICATION OF THE CONSTITUTION OF THE REPUBLIC OF ESTONIA

Article 1. The Constitution shall enter into force on the day following its adoption by referendum and shall be applied in accordance with procedures established by this law. The authority of the Republic of Estonia Supreme Council and the Congress of Estonia shall cease upon the announcement of the results of the Riigikogu elections. Until the results of the Riigikogu elections have been announced, the Republic of Estonia Supreme Council shall carry out the functions of the legislative body. The Government of the Republic, confirmed into office by the Supreme Council, shall be released from office upon the assumption of office of a government formed by the Riigikogu.

Article 2. Legal acts currently in force in the Republic of Estonia shall continue to be enforced after the Constitution enters into force, insofar as they do not contradict the Constitution or the Law on the Application of the Constitution and until such a time as they are voided or brought into full accordance with the Constitution. In cases of dispute, the National Court shall decide whether a legal act is in accordance with the Constitution and with the Law on the Application of the Constitution.

Article 3. Elections to the Riigikogu and for the President of the Republic shall be announced by the Supreme Council after the adoption of the Constitution, whereby the schedule for the election shall be determined. The elections must be held no later than September 27, 1992. The authority of the first complement of the Riigikogu elected after the adoption of the Constitution shall extend, as an exception, up to three years. The first session of the Riigikogu shall be convened by the Chairman or Vice-Chairman of the Republic of Estonia Electoral Committee within ten days after the announcement of the election results. The Chairman or Vice-Chairman of the Republic of Estonia Electoral Committee shall lead the work of the Riigikogu until the election of the chairman of the Riigikogu. Until the adoption of the Law on the Riigikogu Standing Orders and Law on Riigikogu Procedure, the Riigikogu shall have

a quorum if at least one-half of its members are present at a session. For the purposes of the Constitution, the following shall mean:

—a majority of affirmative votes—more affirmative votes than negative votes are cast;

—a two-thirds majority of votes—at least twice as many affirmative votes than negative votes are cast;

—a four-fifths majority of votes—at least four times as many affirmative votes than negative votes are cast;

—a majority of the members of the Riigikogu—more than one-half of the members of the Riigikogu cast an affirmative vote;

—a two-thirds majority of the members of the Riigikogu—at least two-thirds of the members of the Riigikogu cast an affirmative vote;

—a three-fifths majority of the members of the Riigikogu—at least three-fifths of the members of the Riigikogu cast an affirmative vote.

Prior to the announcement of the elections to the Riigikogu and for the President of the Republic, the Supreme Council shall enact legal acts on electing the President of the Republic and on remuneration and social security for members of the Riigikogu and the President of the Republic.

Article 4. Article 78, Point 11, and Article 79 of the Constitution shall be applied after the President of the Republic, elected on the basis of the present Article, assumes office. In applying the Constitution, the President of the Republic, as an exception, shall be elected simultaneously with the election of the Riigikogu through a general, uniform and direct election, by secret ballot, by a majority of votes cast, for a term of four years. If no one candidate receives more than one-half of the votes cast, the President of the Republic shall be elected by the Riigikogu from amongst the two candidates who receive the greatest number of votes within ten days of the convention of the Riigikogu. Detailed procedures for the election of the President of the Republic shall be established by the Presidential Electoral Law. The right to nominate candidates for President shall rest with at least ten thousand Republic of Estonia citizens, who have the right to vote. Any person who is a candidate for the office of President of the Republic may not simultaneously be a candidate for the Riigikogu.

Article 5. The entering into force of the Constitution shall not in itself bring about the end of the employment relations of existing employees of government bodies. The authority of the Auditor-General, the President of the Bank of Estonia, the Chairman of the National Court and the members of the National Court, appointed to office for a term by the Supreme Council, shall extend until the end of their appointed term. Candidates for the offices listed in point 11 of Article 78 of the Constitution, and which are not specified in sentence 2 of this article, shall be presented by the President of the Republic to the Riigikogu within 60 days after assuming office.

Article 6. Until December 31, 2000, candidates for the office of President of the Republic, the Riigikogu or local government councils, as well as persons who seek the office of Prime Minister, minister, Chairman of the National Court, member of the National Court, judge, Legal Chancellor, Auditor-General, President of the Bank of

Estonia, Commander or Commander-in-Chief of the Defense Forces or any other government or local government office filled by election or appointment must take a written oath of conscience that they have not been in the service or an agent of security organizations, military intelligence or counterintelligence services of states which have occupied Estonia and that they have not participated in the persecution or repression of citizens for their political convictions, disloyalty, social class or service in the government or defense services of the Republic of Estonia. If a court determines that the information confirmed by the oath is untrue, the candidate shall be excluded from the list of candidates or his or her mandate shall be voided, or the person shall not be appointed to the offices noted in sentence 1 of this Article or the person shall be dismissed from office.

Article 7. Persons who wish to remain in the offices specified in sentence 1 of Article 6, which they have assumed prior to the convention of the Riigikogu, must take the written oath of conscience within 30 days after the convention of the Riigikogu. If a person refuses to take the oath or if a court determines that the information confirmed by the oath is untrue, the person shall be dismissed from office. Regulations for taking the oath shall be enacted by the Supreme Council prior to the declaration of the elections to the Riigikogu and for the President of the Republic.

Article 8. During the three years following the adoption of the Constitution by referendum, the Riigikogu shall have the right to make urgent amendments to the Constitution with a two-thirds majority vote of the Riigikogu. The decision to consider a draft law to amend the Constitution as a matter of urgency shall be adopted by a majority of affirmative votes. The right to initiate amendments to the Constitution during the three years after the adoption of the Constitution by referendum shall also rest with public initiative, in the form of at least ten thousand citizens, who have the right to vote. The proposal to amend the Constitution by public initiative shall be entered into the agenda of the Riigikogu as a matter of urgency and shall be resolved in accordance with procedures established in sentence 1 of this Article.

Article 9. This law is adopted together with the Constitution, by referendum on June 28, 1992. The law shall enter into force simultaneously with the Constitution. The Law on the Application of the Constitution may be amended in accordance with procedures prescribed for amendments to the Constitution.

THE CONSTITUTION OF THE REPUBLIC OF HUNGARY

In order to facilitate peaceful political transition into a jural state ready to realize a multiparty system, introduce parliamentary democracy, and promote conversion to a socially alert market economy, Parliament submits the following text as the authorized version—until the ratification of its replacement—of the Constitution of Hungary.

Chapter I—General Provisions

Article 1. Hungary is a Republic.

Article 2. The Republic of Hungary is an independent and democratic jural state. In the Republic of Hungary all power belongs to the people. The people exercise their sovereignty through elected representatives or directly. In this country no activity, whether of a social or state organization, and no endeavor of any citizen, may be aimed at securing or exercising power by means of force, or at the exclusive possession of power. Anyone has the right and the duty to take action against such endeavors in any lawful manner.

Article 3. In the Republic of Hungary, political parties may be freely founded and may act in freedom provided they show respect for the Constitution and the statutes of constitutional law. The parties are involved in registering and expressing the will of the people. The parties may not exercise public power directly. Accordingly, no party may control or direct any State organ. In order to ensure the effective separation of the parties from State power, the law determines the social and public offices that cannot be filled by any member or officer of any party.

Article 4. The trade unions and other interest organizations protect and represent the interests of employees, cooperative members, and of entrepreneurs.

Article 5. The State of the Republic of Hungary safeguards the freedom and power of the people, the sovereignty and territorial integrity of the country, and the boundaries registered in international treaties.

Article 6. The Republic of Hungary repudiates war as a means of dealing with conflicts between nations and refrains from the use of force against the independence or territorial integrity of other states. It also refrains from making threats implying recourse to force. The Republic of Hungary is working for cooperation with all the peoples and

countries of the world. The Republic of Hungary bears a sense of responsibility for what happens to Hungarians living outside of its borders and promotes the fostering of their relations with Hungary.

Article 7. The legal system of the Republic of Hungary accepts the universally recognized rules and regulations of international law, and harmonizes the internal laws and statutes of the country with the obligations assumed under international law. The law regulates legislative procedures. The votes of two-thirds of the Members of Parliament present are required for passing new legislation.

Article 8. The Republic of Hungary recognizes the inviolable and inalienable rights of persons. Ensuring respect and protection for these rights is a primary obligation of the State. In the Republic of Hungary the law contains rules on fundamental rights and obligations, but must not impose any limitations on the essential contents and meaning of fundamental rights.[1] In times of emergency, national crises, or extreme danger, the observation of fundamental rights may be suspended or their exercise curtailed—except for the fundamental rights specified in Articles 54 through 56, sentences 2–4 in Article 57, Articles 60, 66 through 69, and Article 70/E.

Article 9. Hungary has a market economy in which public and private property are to receive equal consideration and protection under the law. The Republic of Hungary recognizes and supports the right to enterprise and the freedom of economic competition.

Article 10. Any property of the Hungarian State is part of the country's national wealth. The full range of exclusive ownership by, and of the exclusive economic activities of, the State is determined by the law.

Article 11. State-owned companies and economic units operate independently in the manner and with the responsibility defined by the law.

Article 12. The State supports cooperatives based on voluntary association and recognizes their autonomy. The State respects the assets and property of local governments.

Article 13. The Republic of Hungary guarantees the right to property. Property may be expropriated only exceptionally when this is a matter of public interest, and only in the cases and in the manner regulated by law, under terms of full, unconditional and immediate indemnification.

Article 14. The Constitution guarantees the right of inheritance.

Article 15. The Republic of Hungary protects the institution of marriage and the family.

Article 16. The Republic of Hungary pays special attention to the secure existence, education and training of young people and protects the interests of youth.

Article 17. The Republic of Hungary sees to the wants of the needy through a long line of social measures.

Article 18. The Republic of Hungary recognizes and implements everyone's right to a healthy environment.

1 Repealed with Law No. XL of 1990.

Chapter II—Parliament

Article 19. Parliament is the supreme organ of State power and popular representation in the Republic of Hungary. Exercising its rights deriving from the sovereignty of the people, Parliament ensures the constitutional order of society, and determines the organization, orientation and conditions of government. Within this competence, parliament

(a) enacts the Constitution of the Republic of Hungary;

(b) frames laws;

(c) defines the social and economic objectives of the country;

(d) checks the balance of State finances and approves the Budget and its implementation;

(e) decides on the adoption of the Government program;

(f) ratifies the international treaties that are of outstanding significance for the external relations of the Republic of Hungary;

(g) decides on the declaration of a state of war and the questions of concluding peace;

(h) in case of a state of war or of the immediate threat of armed attack by a foreign power (the danger of war) it proclaims a state of emergency and sets up the National Defense Council;

(i) In case of armed action aiming to overthrow the constitutional order to gain absolute power, in cases of acts of violence committed with arms or by armed units that jeopardize the lives and material security of citizens on a mass scale, of natural disasters or serious industrial accidents (hereinafter: emergency) it declares a state of emergency;

(j) decides on the use of the armed forces outside or inside the country;

(k) elects the President of the Republic, the Prime Minister, the members of the Constitutional Court, the ombudsmen to deal with the observation of civil rights and the rights of national and ethnic minorities, the president and vice presidents of the State Audit Office, the president of the Supreme Court and the chief prosecutor;

(l) on the proposition of the Government submitted after consultation with the Constitutional Court, dissolves local representative bodies whose operation has been found unconstitutional; decides on the geographical boundaries, the names, and seats of counties; on the reregistration of some townships as cities of county status; and on any changes in the borders of the districts of the capital city;[2]

(m) exercises general amnesty.

For decisions on the cases enumerated in points (g), (h), (i) and (j) of [the preceding] paragraph, the votes of two-thirds of the Members of Parliament are necessary. A national plebiscite may be called by Parliament if the decision is supported by the votes of two-thirds of the MPs present at the time.

Article 19/A. If Parliament is prevented from making the decisions concerned, the President of the Republic may call for a state of war, announce a state of emergency,

2 Point (a) of sentence 3 of this article is the text formulated in Article 1 of Law No. LXIII of 1990.

set up the National Defense Council, and proclaim a state of extreme danger. Parliament is to be considered incapacitated if it is not in session and [if] convening it is impossible because of the shortness of time, or because of the events that have caused the state of war, the emergency, or crisis. The fact of incapacitation, and therefore the need for proclaiming an emergency or crisis, is verified by the Speaker of Parliament, the President of the Constitutional Court and the Prime Minister jointly. At its first session after its incapacitation, Parliament supervises the justification of a state of war, state of emergency or crisis, and decides about the legitimacy of the measures taken. To carry such a decision, the votes of two-thirds of the Members of Parliament are required.

Article 19/B. In case of an emergency, the National Defense Council decides about the deployment of the armed forces outside or inside the country and the introduction of the emergency measures defined in a separate law. The President of the Republic presides over the National Defense Council. The members of the Council are: the Speaker of Parliament, the leaders of the factions of the parties represented in Parliament, the Prime Minister, the ministers, and the commander and chief of staff of the Army. The National Defense Council exercises:

(a) the rights temporarily vested in it by Parliament
(b) the rights of the President of the Republic, and
(c) the rights of the Government.

The National Defense Council may pass decrees in which it may suspend the force of certain laws or deviate from certain legal provisions. It may also pass other special measures, but must not suspend the Constitution. Unless Parliament acts to prolong their validity, decrees passed by the National Defense Council go out of force as soon as the given state of emergency is over. Not even a state of emergency may limit the operation of the Constitutional Court.

Article 19/C. If Parliament is prevented from taking action during a state of emergency, decision on the deployment of armed forces is up to the President of the Republic. During a state of crisis (peril) the emergency measures defined in a separate law are introduced by a decree of the President of the Republic. The President of the Republic informs without delay the Speaker of Parliament about the emergency measures introduced. During any period of emergency, Parliament—or if the former is hindered, the National Defense Committee of Parliament—remains in session. Parliament, or the National Defense Committee, is free to suspend emergency measures the President of the Republic has called for. The emergency measures decreed remain in effect for thirty days unless their validity has been extended by Parliament, or, if Parliament is inhibited, by its National Defense Committee. The same rules are to be applied in a state of peril, extreme danger as in a state of emergency.

Article 19/D. To pass a law on the detailed rules applicable during a state of emergency, peril or crisis, the affirmative votes of two-thirds of the MPs present are necessary.

Article 20. Parliament is elected for a term of four years. Members of Parliament act in the public interest. Members of Parliament are entitled to immunity as defined and

regulated in the law on their legal status. Members of Parliament are entitled to fees to ensure their independence, to certain benefits, and to compensation to cover costs.[3]

To pass a law on the amount of the fee, the sums of compensation and on the range of special concessions, the votes of two-thirds of the MPs present are required. No Member of Parliament may become President of the Republic, member of the Constitutional Court, ombudsman; president, vice president or accountant of the State Audit Office; judge or prosecutor; or—except for members of the Government and political state secretaries—work in any organ of state administration. No MP may be a regular or hold professional status in the armed forces, in the police and in any security force. The law may also establish other cases of incompatibility. To pass the law on the legal status of Members of Parliament, the votes of two-thirds of the MPs present are necessary.

Article 20/A. The mandate of a Member of Parliament is terminated

(a) with the end of the term of Parliament,

(b) with the death of a MP,

(c) with the demise of the MP concerned,

(d) when incompatibility is declared,

(e) if the MP is disfranchised.

If a reason is cited for incompatibility (sent. 2, Article 20) by any representative of the House against a Member of Parliament, Parliament decides whether to pronounce incompatibility. Addressing a statement to this effect to Parliament, an MP may give up his mandate. No confirmatory statement from Parliament is necessary for the resignation to be valid.

Article 21. Parliament elects its Speaker, deputy speakers, and Clerk from among its members. Parliament sets up standing committees from among its members and may delegate a committee to investigate any given question. Data requested by parliamentary committees must not be denied; anybody summoned to testify before a parliamentary committee is obliged to do so.

Article 22. Parliament holds regular sessions twice a year—from February 1 to June 15, and from September 1 until December 15. The constituent session of Parliament is convened—for a date within one month after the elections—by the President of the Republic. Otherwise it is the duty of the Speaker of Parliament to convene sessions—and each individual sitting—of Parliament. If this is requested by the President of the Republic, by the Government, or by one-fifth of the MPs, Parliament must be convened for a special session or special meeting. The request has to specify the reason for convening Parliament, the date(s) proposed, and the agenda to be followed.

The President of Parliament may adjourn—for no more than thirty days—a session of Parliament on one occasion during any given session. During the adjournment period, the President of the Republic is obliged to convene Parliament if one-fifth of the MPs petition this in writing, within eight days of his receipt of the request.

3 The preceding sentence of Article 20 is the text formulated in Article No. 1 of Law LIV of 1990.

Article 23. The meetings of Parliament are open to the public. However, on the request of the President of the Republic, the Government, or any MP, Parliament may call for a meeting in camera if the request is supported by two-thirds of the Members of Parliament.

Article 24. Parliament has a quorum when more than half of the MPs are present. Parliament passes a decision with the affirmative votes of more than half of the MPs present. For the amendment of the Constitution, or for passing certain decisions defined in the Constitution, the affirmative votes of two-thirds of the Members of Parliament are required. Parliament lays down the rules of procedure and the order of debates in standing orders for which the votes of two-thirds of the MPs present are required.

Article 25. Legislation may be initiated by the President of the Republic, the Government, any parliamentary committee and any Member of Parliament. The right of legislation is vested in Parliament. Acts passed by Parliament are signed by the Speaker and sent to the President of the Republic.

Article 26. Within fifteen days—or, if the Speaker of Parliament so requests, within five days—of receipt of the law framed, the President of the Republic endorses it and sees to its promulgation. Ratified Acts of Parliament have to be published in the Official Gazette. If the President of the Republic does not accept the law or some of its provisions, he may, before signing it but within the deadline set in sentence 1, send it back with his comments to Parliament for reconsideration. Parliament debates the law anew and decides on enactment again. After the reconsidered Act has been returned to him, the President of the Republic is bound to sign it and to promulgate it within five days of its receipt.

If the President of the Republic thinks that any provision of the law may be unconstitutional, he sends it within the deadline set in sentence 1 to the Constitutional Court before signing it, and requests a report on its constitutionality. If the Constitutional Court, after proceeding on the law with the requested urgency, has found it unconstitutional, the President of the Republic returns the law to Parliament. Otherwise, he is bound to sign the Act and promulgate it within five days.

Article 27. Members of Parliament may put questions to the ombudsmen (parliamentary commissioners) for the implementation of civil, and national and ethnic minority rights, to the president of the State Audit Office, and to the president of the Hungarian National Bank; and address interpellations and questions to the Government, to any member of the Government, and to the Chief Prosecutor (Attorney General) on any matter that falls within their competence.

Article 28. The mandate of Parliament commences with its constituent meeting. Parliament may proclaim its dissolution even before the expiry of its mandate. The President of the Republic may dissolve Parliament simultaneously with setting the dates for the new election if

(a) Parliament has at least four times within twelve months during its own mandate withdrawn its confidence from the Government, or

(b) in case the mandate of the Government had ended, Parliament failed to elect within

forty days after the date of the first nomination, the candidate prime minister put up for the office by the President of the Republic.

Before dissolving Parliament, the President of the Republic is bound to consult with the Prime Minister, the Speaker of Parliament and with the heads of the factions of the parties that have representatives in Parliament. Within three months after the expiry of the term of Parliament, its dissolution or its being dissolved, a new Parliament has to be elected. Parliament operates until the constituent meeting of the new Parliament.

Article 28/A. During the period of an emergency, Parliament may not declare its dissolution and may not be dissolved. If the term of Parliament expires during an emergency, its mandate is automatically extended until the end of the peril. A Parliament that has dissolved or been dissolved may be reconvened by the President of the Republic in case of a state of war, the threat of war, or any other emergency situation. In that case, Parliament itself decides on the extension of its mandate.

Chapter III—The President of the Republic

Article 29. The President of the Republic is Hungary's head of State. He stands for the unity of the nation and safeguards the democratic operation of the State organization. The President of the Republic is the commander-in-chief of the armed forces.

Article 29/A. The President of the Republic is elected by Parliament for a term of five years. Any enfranchised citizen who has had his 35th birthday by election day is eligible for the post of the President of the Republic. The President of the Republic may be reelected for this office for no more than one additional term.

Article 29/B. The election of the President of the Republic is preceded by nominations. Written recommendation by at least fifty Members of Parliament is required for valid candidacy. The list of the candidates who have been validly nominated must be submitted to the Speaker of Parliament before the votes are called. Any one Member of Parliament may recommend only one candidate. The recommendations of those who have made more than one nomination are declared null and void. Parliament elects the President of the Republic by secret ballot. The voting process may have to be repeated several times as needed. A candidate is elected President of the Republic if he has won two-thirds of the votes of the Members of Parliament. If no candidate commands this two-thirds majority on the first balloting, a new vote has to be called on the basis of new recommendation according to sent. (1). For election of the second polling, a two-thirds majority of the votes is required again.

If the required majority has not been produced by the second polling either, a third voting has to be held. On the third polling, the ballots have to be cast for one of the two candidates who received the highest number of votes on the second polling. The President of the Republic is elected on the basis of the third polling if regardless of the number of voters casting ballots—he has won the majority of the votes cast. The voting process has to be completed in the maximum period of three successive days.

Article 29/C. The President of the Republic is to be elected at least thirty days before expiry of the mandate of the earlier President, and, if the mandate has ended before the

end of the term, after thirty days of expiry. The date for the presidential election is set by the Speaker of Parliament.

Article 29/D. The elected President of the Republic occupies his post on the expiry of the mandate of the earlier president, or, in case the mandate has come to an end prematurely, on the eighth day following the announcement of the election returns. Prior to entering office, the President of the Republic takes his oath of office before Parliament.

Article 29/E. In case of the temporary incapacitation of the President of the Republic, or if for some reason his mandate comes to an end prematurely, his competence is bestowed upon the Speaker of Parliament until the new President of the Republic has been inducted into office. However, the Speaker of Parliament acting as President of the Republic may not forward laws to Parliament for reconsideration or to the Constitutional Court for study; he must not dissolve Parliament and has the right of granting clemency only to benefit people whose judgment-at-law has become definitive. While he is substituting for the President of the Republic, the Speaker of Parliament must not exercise his rights as a member of Parliament, and his responsibilities as Speaker are taken over by the deputy speaker designated by Parliament.

Article 30. The office of the President of the Republic is incompatible with every other State, social, and political office or assignment. The President of the Republic may not pursue any other remunerative occupation, and, except for activities enjoying copyright protection, must not accept any other fees. The votes of two-thirds of the MPs present at the sitting are required for decisions on the President's regular fees, prerogatives and reimbursement on costs incurred in the fulfillment of duties.

Article 30/A. The President of the Republic

(a) represents the Hungarian State;

(b) concludes international treaties and agreements on behalf of the Republic of Hungary. If the subject of the agreement belongs under the competence of the legislation, the prior agreement of Parliament is required for concluding the agreement;

(c) accredits and receives ambassadors and envoys;

(d) sets the dates for the parliamentary elections and for the general elections of local authorities;

(e) may participate in, and have the floor at, the meetings of Parliament and parliamentary committees;

(f) may propose that Parliament take certain measures;

(g) may make a motion for the holding of a plebiscite;

(h) according to rules defined in a separate law, appoints and relieves of their duties state secretaries and ombudsmen,[4]

(i) on the proposal of persons or organs defined in a separate law, appoints and relieves the president and vice presidents of the Hungarian National Bank, and university professors; appoints and relieves of their duties the rectors of universities; appoints and

4 Points (d) and (h) of sentence 1 of Article 30/A amended in accordance with Article 2 of Law No. LXIII of 1990.

promotes generals; confirms the president of the Hungarian Academy of Sciences in his office;

(j) confers the titles defined in the law, awards orders of merit and distinctions, and authorizes using or wearing them;

(k) exercises the right of granting clemency in individual cases;

(l) decides in citizenship cases;

(m) decides all affairs separate laws have referred to his competence.

Every measure and decree of the President of the Republic—except for those contained in points (a), (d), (c), (f) and (g)—requires countersigning by the Prime Minister or the competent minister.

Article 31. The mandate of the President is terminated

(a) with expiry of the term of office

(b) with the death of the President

(c) if there is a state of emergency that makes fulfilling his duties impossible for a period of more than ninety days

(d) if incompatibility has been declared

(e) if he has resigned

(f) if he has been stripped of the presidency.

In case there are reasons to indicate incompatibility in connection with the person of the President of the Republic in the fulfillment of his office (Article 30, sentence 1), Parliament takes a decision on declaring incompatibility after a representative has made the relevant motion. To pass the decision, the affirmative votes of two-thirds of the Members of Parliament are required. Voting is by secret ballot. The President of the Republic may resign from his post in a statement addressed to Parliament. For the resignation to take effect, a statement of acceptance is necessary from Parliament. Within 15 days after his initial resignation, the President may be requested by Parliament to reconsider his decision. If the President of the Republic abides by his decision, Parliament cannot refuse accepting the resignation. The President of the Republic may be stripped of his office if in the performance of his functions he has deliberately flouted the Constitution or transgressed any other law.

Article 31/A. The person of the President of the Republic is inviolable; his special protection is ensured by a separate law. One-fifth of the Members of Parliament may lodge a motion to impeach the President of the Republic if he has offended against the Constitution or any other law.

To start the impeachment procedure, the votes of two-thirds of the members of Parliament are required. Voting is by secret ballot. After the decision of Parliament until the conclusion of the impeachment procedures, the President must not exercise his functions. Judging the offense is within the competence of the Constitutional Court. If, as a result of the proceedings, the Constitutional Court has established a violation of the law, it may strip the President of the Republic of his office.

Article 32. If impeachment proceedings have been started against the President of the Republic because of an act subject to criminal persecution committed during his term of office in connection with his official duties, the Tribunal has to apply the basic

provisions of criminal law procedure as well. A prosecuting commissioner Parliament has chosen from its own ranks presents the indictment. The President of the Republic may be held criminally accountable for other acts only after the termination of his office. If the Tribunal has established the culpability of the President of the Republic in a deliberate criminal offense, it may strip him of his office, and at the same time may apply any measure or punishment specified in the Criminal Code for the given offense.

Chapter IV—The Constitutional Court

Article 32/A. The Constitutional Court oversees the constitutionality of legal provisions and performs other functions the law refers to its competence. Any law or legal measure found unconstitutional is annulled by the Constitutional Court. In the cases defined by the law, anyone may initiate proceedings at the Constitutional Court. The fifteen members of the Constitutional Court are elected by Parliament. A nominating committee comprising one member from each of the parties represented in Parliament, proposes candidates for Constitutional Court membership. Two-thirds of the affirmative votes of the Members of Parliament are necessary for election to the Constitutional Court. Outside of the responsibilities deriving from the authority of the Constitutional Court, the members of the Court must not be affiliated to any party and must not carry on political activity. For the ratification of the law on the organization and operation of the Constitutional Court, two-thirds of the votes of the MPs present are necessary.

Chapter V—Ombudsman for the Protection of Civil Rights; Ombudsman for the Protection of National and Ethnic Minority Rights

Article 32/B. It is the duty of the Parliamentary Commissioner (Ombudsman) for Civil Rights to investigate, or to have investigated, any abuse of constitutional rights that has come to his attention, and to initiate general or particular measures for redress. The Ombudsman for the protection of national and minority rights investigates, or has investigated, any abuse of nationality or ethnic minority rights that has come to his attention, and initiates general or particular measures for redress. In cases defined in the law, anyone may propose that the Ombudsman take action.

The Ombudsmen for civil rights and for nationality and ethnic minority rights are elected, on the nomination of the President of the Republic, by Parliament—with two-thirds of the affirmative votes of all MPs necessary. For the protection of certain constitutional rights, Parliament may elect separate Ombudsmen. The competence of the Ombudsman for national and ethnic minority rights is exercised by a body appointed by national and ethnic minority groups and elected by the Parliament consisting of one person for each nationality and ethnic minority group, and elected by Parliament. Each Ombudsman reports on his activities and experiences annually to Parliament. For the ratification of the law on Ombudsmen, the affirmative votes of two-thirds of the MPs present are required.

Chapter VI—The State Audit Office and the Hungarian National Bank

Article 32/C. The State Audit Office is the financial and economic accounting organization of Parliament. It is its duty to exercise control over the management of state finances and the Budget, and within this to oversee the cogency of the Budget Bill and the merit and expediency of each item of spending. It countersigns contracts on credit claimed by the Budget; oversees in advance the legality of the spendings the Budget has planned for; checks the final accounts of the State Budget. The State Audit Office controls the management of State assets, the wealth-preserving and wealth-increasing work of State-owned companies and enterprises; and sees to other duties that are part of its competence under the law. The State Audit Office is led in its work and controlling activity by considerations of legality, expediency, and the financial results of the units concerned. The State Audit Office reports on its findings to Parliament, and its reports must be made public. The president of the State Audit Office submits the findings of the Office on the final accounts together with the final account itself to Parliament. For the election of the president and vice presidents of the State Audit Office, the votes of two-thirds of the Members of Parliament are required. For the ratification of the law on the principles to govern the organization and operation of the State Audit Office, two-thirds of the votes of the MPs present are necessary.

Article 32/D. It is the responsibility of the Hungarian National Bank to issue legal tender in the manner determined by the law, to protect the stability of the national currency, and to regulate the circulation of money. The President of the Hungarian National Bank is appointed by the President of the Republic for a term of six years. The President of the Hungarian National Bank presents to Parliament a report on the activities of the Bank once a year.

Chapter VII—The Government

Article 33.[5] The Government consists of

(a) The Prime Minister and

(b) the ministers.

The Prime Minister's substitute is the minister he has designated. The Prime Minister is elected by a simple majority vote of the Members of Parliament. Parliament decides on the election of the Prime Minister and on acceptance of the Government program at the same time. The ministers are proposed by the Prime Minister, and appointed and relieved of their duties by the President of the Republic. The Government is formed when the ministers have been appointed. After the formation of the Government, its members take their oath of office before Parliament.

Article 33/A. The mandate of the Government ends

(a) with the formation of the newly elected Parliament

(b) with the resignation of the Prime Minister, or the Government

5 Change introduction by Law No. XXIX of 1990.

(c) with the death of the Prime Minister, or

(d) if, in accordance with the contents of sentence 1, Article 39/A, Parliament has carried a no-confidence motion in regard to the Prime Minister and elects a new Prime Minister.

Article 34.[6] The enumeration of the ministries of the Republic of Hungary is contained in a separate law.

Article 35. The Government

(a) protects constitutional order, protects and ensures the rights of citizens

(b) ensures the implementation of the laws

(c) directs and coordinates the work of the ministries and of other organs directly subordinated to them

(d) with the involvement of the Minister of the Interior, it ensures the control of the legality of the operation of the authorities,[7]

(e) ensures the elaboration of social and economic plans and sees to their implementation

(f) determines the role of the State in scientific and cultural development and ensures the conditions for their realization

(g) designates the State system of social welfare and medical care provisions, and ensures the conditions required

(h) it supervises the operation of the armed forces, of the police and of other law-and-order maintenance agencies

(i) takes the necessary measures to avert the consequences of natural disasters that jeopardize the security of the life and property of citizens (from here on, emergency situations), and to ensure public law and order and public security

(j) participates in the determination of foreign policy and concludes international agreements on behalf of the Government of the Republic of Hungary

(k) performs all functions the law refers to its competence.

In its own sphere of functions the Government issues decrees and passes resolutions. These are signed by the Prime Minister. No decree and resolution of the Government may be contrary to the law. Decrees issued by the Government must be promulgated in the *Official Gazette*. In an emergency situation the Government, empowered by Parliament, may pass decrees and measures that deviate from the provisions of certain laws. For the ratification of the law on emergency rules, the affirmative votes of two-thirds of the MPs present are necessary. Except for legal provisions, the Government annuls or amends all resolutions or measures passed by subordinate organs that are contrary to the law.

Article 36. In the performance of its functions, the Government cooperates with the social organizations concerned.

Article 37. The Prime Minister presides over Government sessions and provides for the enforcement of Government decrees and resolutions. The ministers head the

6 Ibid.

7 Point (d) of Article 35 is the text formulated in Article 3 of Law No. LXIII of 1990. It enters into force on the day of the election of the members of the representative bodies of the local authorities.

branches of public administration within their scope of functions, and direct the organs subordinated to them in conformity with legal provisions and Government resolutions. Ministers without portfolio perform functions designated by the Government. In the performance of their functions, the Prime Minister and the members of the Government may issue decrees. However, these must not be contrary to any law or any government decree and resolution. The decrees have to be promulgated in the *Official Gazette*.

Article 38.[8]

Article 39. In the performance of its functions the Government is responsible to Parliament. It is bound to render account of its activities regularly to Parliament. The members of the Government are responsible for their work to the Government and to Parliament, and must report on their activities to both. Their legal status, pay and the manner in which they may be impeached are regulated by law. Members of the Government may participate in, and take the floor at, the sessions of Parliament.

Article 39/A. A nonconfidence motion may—with the designation of the preferred candidate for Prime Minister—be launched against the Prime Minister on the written proposal of at least one-fifth of the Members of Parliament. A nonconfidence motion against the Prime Minister is to be regarded as a nonconfidence motion against the Government. If the majority of the Members of Parliament have expressed nonconfidence in the motion, the candidate named as the choice for the new Prime Minister must be regarded as elected. The debate and voting on the motion must be held three days after it has been submitted at the soonest, and after eight days at the latest. Through the Prime Minister, the Government may propose a vote of confidence in compliance with the time limits set in paragraph [1]. Through the Prime Minister, the Government may also recommend that the voting over the proposal it put forward should be at the same time a vote of confidence. If Parliament does not vote its confidence to the Government as laid down in paragraph [1], the Government must resign.

Article 39/B. If the mandate of the Government is terminated, the Government is to stay in office until the formation of the new Government and to exercise all Government rights. However, it must not conclude international agreements, and it may issue decrees only on the basis of express empowerment by the law in special cases when no delay is permissible.

Article 40. For the discharge of certain functions, the Government may set up government committees. In any matter coming within the scope of state administration, the Government may take action directly or through any of its members. The Government is authorized to draw any branch of State administration directly under its control and to create special organs for this purpose.

Chapter VIII—The Armed Forces and the Police

Article 40/A. The armed forces (Hungarian National Army, Border Guard) have the fundamental function of providing military protection for the homeland. For the

8 Repealed with Act No. XXXI of 1989.

ratification of the law on the duties of the armed forces and the detailed rules applying to them, the votes of two-thirds of the MPs present are necessary. The fundamental function of the police is to safeguard public security and defend law and order. The ratification of the law on the police and the detailed rules connected with national security require two-thirds of the votes of the MPs present.

Article 40/B. Except for military exercises based on valid international agreements or peace maintenance activities performed on request of the United Nations Organization, the armed forces may cross state borders only with the prior consent of Parliament. The armed forces may be used only in times of an emergency situation promulgated in accordance with the provisions of Constitution, in case of armed action aimed at the overthrow of the constitutional order or at the seizure of absolute power, or, further, in cases of violence committed with arms, or the use of force in a manner endangering the safety of the life and property of citizens on a mass scale, and only when the deployment of the police is not sufficient. Unless there is a valid international agreement containing other provisions, the command of the armed forces is the exclusive province of Parliament, of the President of the Republic, the National Defense Council, the Government and the competent minister as laid down in the Constitution or in a separate law. A law adopted with the votes of two-thirds of the MPs present may restrict any party activity by the regular members of the armed forces and of the police.

Article 40/C. Unless there is a valid international agreement in force to the contrary, foreign armed forces may not pass through and may not be used or be stationed in, the territory of the country without the prior consent of Parliament. International agreements that concern national defense must be confirmed in the law and promulgated.

Chapter IX—Local Governments[9]

Article 41. The territory of the Republic of Hungary consists of administrative units including the Capital, the counties, cities, towns and villages. The Capital is divided into districts. Districts may be formed in other cities also.

Article 42. The enfranchised citizens of the villages, towns, of the Capital City and its districts, and of the counties are entitled to the right of local self-government. Local self-government means autonomous and democratic management of local affairs by the communities concerned and exercise of local public authority in the interest of the population.

Article 43. All local authorities have the same fundamental rights (44/A). However, the duties and responsibilities of local governments may be different. The rights and duties of local governments are determined by the law. The Courts protect the lawful exercise of jurisdiction by local authorities. Local governments are free to turn to the Constitutional Court for the protection of their rights.

9 Chapter IX is worded in accordance with Article 4 of Law No. LXIII of 1990. It entered into force on the day of the election of the members of the representative bodies of the local government authorities.

Article 44. Citizens who have the vote exercise local government through the representative body they have elected and by local plebiscites. The members of the representative body are elected for a term of four years.

Article 44/A. The local representative body

(a) regulates and administers matters that belong to the competence of the local authority; its decisions may be revised only if there is a question of their legitimacy

(b) exercises ownership rights in regard to local-authority property, independently budgets the incomes of the local government, and may start ventures on its own responsibility

(c) to deal with its duties as laid down in the law, the local authority is entitled to an adequate income of its own to perform its functions and also receives State support proportionate to its scope of duties

(d) authorizes, within the limits of the law, local taxes (rates), their types and measures

(e) within the limits of the law, it independently sets up its organization and formulates its standing orders

(f) may create local emblems, and found local titles, distinctions and awards

(g) in public affairs of concern to the local community, it may put forward initiatives to the organizations entitled to take decisions

(h) free to form associations with other local representative bodies, it may also create interest organizations with other local authorities, and may within its competence cooperate with local authorities in other countries, and affiliate itself with international organizations of local governments.

A local representative body may frame decrees within its competence, which, however, must not be in conflict with legal provisions of a higher level.

Article 44/B. The Mayor is the president of the local representative body. A representative body may elect committees and set up its own office. Apart from his duties and responsibilities in local government, the Mayor may exceptionally, on the basis of the law or legal authorization, perform duties of state administration and authority. A law or government decree may assign state administrative functions and authority to the Notary, and, exceptionally, to the acting director of the office of the representative body.

Article 44/C. The votes of two-thirds of the MPs present are necessary for the acceptance of the law on local self-government. The same proportion of votes are necessary for the adoption of a law that limits the fundamental rights of local authorities.

Chapter X—The Judiciary

Article 45. In the Republic of Hungary, the Supreme Court of the Republic of Hungary, the Court of the Capital City and the county courts, and local courts administer justice. Legislation may provide for the institution of special courts for certain groups of cases.

Article 46. The courts administer justice in councils of professional judges and lay assessors. Legislation may authorize exceptions to this rule.

Article 47. The Supreme Court of the Republic of Hungary sets guidelines based on

principles for the judicial work of every court. The directives and decisions in questions of principle of the Supreme Court are binding on all courts of the country.

Article 48. The President of the Supreme Court is elected, after nomination by the President of the Republic, by Parliament. The vice presidents of the Supreme Court are appointed by the President of the Republic on nomination by the President of the Supreme Court. For the election of the President of the Supreme Court, the votes of two-thirds of the Members of Parliament are necessary. Professional judges are appointed by the President of the Republic in the manner determined by the law. Judges may be removed from office only for reasons and through procedures laid down in the law.

Article 49.[10]

Article 50. The Courts of the Republic of Hungary protect and ensure constitutional order, the rights and lawful interests of citizens, and punish the perpetrators of criminal offenses. The Courts supervise the legality of the decisions of public administration. Judges are independent and are subordinate only to the law. Judges may not hold membership in any party and must not carry on political activities. To adopt the law on the Courts, the votes of two-thirds of the MPs present are necessary.

Chapter XI—The Prosecutor's Office

Article 51. The Chief Prosecutor and the Prosecutor's Office of the Republic of Hungary provide for the protection of the rights of the citizens and are responsible for the consistent prosecution of every act violating or endangering constitutional order or endangering the security and sovereignty of the country. The prosecutorial organization carries on investigations in cases determined by the law, exercises supervision over the legality of criminal investigations, acts for the prosecution in proceedings before courts, and exercises supervision over the observance of legality in the administration of punishments. The Prosecutor's Office helps to ensure that all social organizations, all state organs and citizens comply with the law. In the event of transgression of the law, it takes action for the protection of legality in the cases determined by the law.

Article 52. The Chief Prosecutor of the Republic of Hungary is elected by Parliament on the proposal of the President of the Republic. The deputies of the Chief Prosecutor are appointed on the proposal of the Chief Prosecutor by the President of the Republic. The Chief Prosecutor is accountable to Parliament, and is obliged to report on his work.

Article 53. Prosecutors are appointed by the Chief Prosecutor of the Republic of Hungary. Prosecutors must not be affiliated with any party and may not carry on political activities. The prosecutorial organization is headed and directed by the Chief Prosecutor. The rules on the prosecutorial organization are laid down in the law.

10 Article 49 was repealed by sentence 1, Article 38, of Law No. XXXI of 1989.

Chapter XII—Fundamental Rights and Duties of Citizens

Article 54. In the Republic of Hungary every human being has the innate right to life and the dignity of man, and no one may be arbitrarily deprived of these rights. No one may be subjected to torture, or to cruel, unusual, inhuman or humiliating treatment or punishment. It is absolutely impermissible to perform medical or scientific experiments on human beings without their consent.

Article 55. In the Republic of Hungary everyone has the right to liberty and personal security, and no one may be deprived of freedom except for reasons defined in the law and on the basis of legal proceedings. Persons suspected of the perpetration of a criminal offense and detained, must be released or brought before a judge as soon as possible. The judge is bound to give a hearing to the person brought before him, and must produce a written decision adducing his reasons for setting the detainee free or keeping him in custody. Anyone who has been victimized through illegal arrest or detainment is entitled to compensation.

Article 56. In the Republic of Hungary every human being has legal standing.

Article 57. In the Republic of Hungary everyone is equal before the law and has the right to defend himself against any accusation brought against him, or, in a civil suit, to have his rights and duties judged by an independent and impartial court of law at a fair public trial or hearing. In the Republic of Hungary no one may be regarded as guilty until his culpability has been established by a legally valid decision of the court. Persons subjected to criminal proceedings are entitled to the right of defense in every phase of the procedure. Defense lawyers must not be called to account for opinions expounded while they present the defense.

No one may be pronounced guilty of, or sentenced for, any act that was not considered a criminal offense under Hungarian law at the time it was committed. In the Republic of Hungary everyone is entitled to legal redress or has the right of appeal against court or administrative decisions, or any other authority's decision, that infringe his rights or lawful interests.

Article 58. Whoever is staying in the territory of Hungary is entitled—except for some cases defined in the law—to free movement and the right of choosing his or her place of residence, including the right of leaving his domicile or the country. Foreigners lawfully staying in Hungary may be expelled from the country only on the basis of a decision that is in accord with the law. The adoption of the law on the freedom of travel and settlement requires the affirmative votes of two-thirds of the MPs present.

Article 59. In the Republic of Hungary everyone is entitled to the protection of his or her reputation and to privacy, including the privacy of the home, of personal effects, particulars, papers, records and data, and to the privacy of personal affairs and secrets. For the acceptance of the law on the protection of the security of personal data and records (particulars), the votes of two-thirds of the MPs present are necessary.

Article 60. In the Republic of Hungary everyone has the right to the freedom of thought, conscience and religion. This right includes the free choice or acceptance of religion or any other conviction according to one's conscience, and the liberty to

express, or refuse to express, to exercise or teach one's religion and conviction through the performance of religious acts and rites, either individually or together with others, either publicly or in a closed circle. In the Republic of Hungary the Church functions in separation from the State. The ratification of the law on the freedom of conscience and of religion requires the votes of two-thirds of the MPs present.

Article 61. In the Republic of Hungary everyone has the right to the free declaration of his views and opinions, and has the right of access to information of public interest, and also the freedom to disseminate such information. The Republic of Hungary recognizes and protects the freedom of the Press. The law on the publicity of data and information and the law on the freedom of the Press require the support of two-thirds of the votes of the MPs present for ratification. For the adoption of the law on the supervision of public radio, television and news agency services, and on the appointment of their leaders; the law on the licensing of commercial radio and television stations, and the prevention of monopolies on information, the votes of two-thirds of the MPs present are necessary.

Article 62. The Republic of Hungary recognizes the right to peaceful assembly and guarantees its free practice. The adoption of the law on the freedom of assembly requires the votes of two-thirds of the MPs present.

Article 63. In the Republic of Hungary everyone has the right, on the basis of the freedom of association, to set up organizations for purposes not prohibited by the law and to adhere to such organizations. For political purposes no armed organization may be established on the basis of the freedom of association. The adoption of the law on the right of association and on the operation and financial management of parties requires the votes of two-thirds of the MPs present.

Article 64. In the Republic of Hungary everyone has the right to submit written petitions or complaints either alone or together with others.

Article 65. On terms laid down in the law, the Republic of Hungary ensures the right of asylum for foreign citizens persecuted in their homeland and for those displaced persons who are at their place of stay harassed on grounds of race, religion, nationality, language or political affiliation. A person already granted asylum must not be extradited to another state. The adoption of the law on the right of asylum requires the votes of two-thirds of the MPs present.

Article 66. The Republic of Hungary guarantees the equality of men and women in regard to all civil, political, economic, social and cultural rights. In the Republic of Hungary, mothers receive special support and protection before and after the birth of their children, in compliance with separate provisions of the law. Special rules ensure protection for women and young people in the performance of their jobs.

Article 67. In the Republic of Hungary, every child has the right to enjoy the care and protection on the part of their families, and by the State and society, that is necessary for satisfactory physical, mental and moral development. Parents are entitled to the right of choosing the kind of education their children are to receive. Special provisions contain the responsibilities of the State in regard to the position and protection of families and of youth.

Article 68. The national and ethnic minorities living in the Republic of Hungary share the power of the people; they are constituent factors in the State. The Republic of Hungary grants protection to national and ethnic minorities, it ensures the possibilities for their collective participation in public life, and enables them to foster their own culture, use the mother tongue, receive school instruction in the mother tongue, and freedom to use their names as spelled and pronounced in their own language. The laws of the Republic of Hungary ensure representation for the national and ethnic minorities living in the territory of the country. National and ethnic minorities may set up their own local and national government organizations.[11] The votes of two-thirds of the MPs present are required to pass the law on the rights of national and ethnic minorities.

Article 69. In the Republic of Hungary no one may be arbitrarily deprived of his or her Hungarian citizenship, nor may any Hungarian citizen be expelled from the territory of the Republic of Hungary. A Hungarian citizen may always come home from abroad. During a legitimate stay abroad every Hungarian citizen is entitled to protection by the Republic of Hungary. The ratification of a law on citizenship requires the votes of two-thirds of the MPs present.

Article 70.[12] All Hungarian citizens of age whose regular domicile is in Hungary have the right to be elected at the elections for Parliament and for local governments, and—if they are in the territory of the country on election day—to vote. The right to vote is denied to those who have been under legal guardianship and are limited or incapacitated in their actions, to those who are doing term under a lawful sentence or who are under compulsory institutional care or treatment ordered in a criminal procedure. In elections of the local self-government even non-Hungarian citizens who have settled in Hungary for a longer period of time have the right to vote, according to a separate law.[13] Every Hungarian citizen has the right to be active in public affairs and to bear public office in accordance with his talent, training and professional qualifications.

Article 70/A. The Republic of Hungary guarantees for all persons in its territory human and civil rights without discrimination on account of race, color, sex, language, religion, political or other views, national or social origins, ownership of assets, birth or on any other grounds. Any discrimination falling within sentence 1 against persons is strictly punishable by law. The Republic of Hungary promotes the realization of equality before the law with measures aiming to eliminate inequalities of opportunity.

Article 70/B. In the Republic of Hungary everyone has the right to work, to the free choice of employment and occupation. Everyone without any discrimination has the right to equal pay for equal work. Everyone who works has the right to emolument that corresponds to the amount and quality of the work performed. Everyone has the right to rest and free time for recreation, and regular paid holidays.

11 The preceding sentence of Article 68 was inserted by the following sentence of Law No. LXIII of 1990, which also changed the numbering from the original (4) to (5).

12 Sentence 1 of Article 70 amended in accordance with Article 6 of Law No. LXIII of 1990.

13 Sentence 3 of Article 70 amended in accordance with Article 6 of Law No. LXIII of 1990.

Article 70/C. Everyone has the right to form an organization for the protection of economic and social rights together with others, or to adhere to such an organization. The right to strike may be exercised within the framework of the law that regulates it. The votes of two-thirds of the MPs present are required to adopt the law on the right to strike.

Article 70/D. People living within the territory of the Republic of Hungary have the right to the highest possible level of physical and mental health. The Republic of Hungary implements this right through arrangements for labor safety, with health institutions and medical care, through ensuring the possibility for regular physical training, and through the protection of the natural environment.

Article 70/E. Citizens of the Republic of Hungary have the right to social security. In case of old age, illness, disability, being widowed or orphaned, and in case of unemployment for no fault of their own, they are entitled to the provisions necessary for subsistence. The Republic of Hungary upholds the right of people to being provided for through the social security system and its institutions.

Article 70/F. The Republic of Hungary ensures for its citizens the right to culture. The Republic of Hungary ensures this right through the expansion of culture and making arrangements for general access to it, through free and compulsory eight-grade education, through the general accessibility of secondary- and third-level instruction, as well as through financial assistance for those in school.

Article 70/G. The Republic of Hungary respects and supports the freedom of science and art, the freedom of learning and of teaching. Only qualified scholars and scientists have the right to arrive at decisions in regard to what should be credited as a contribution to science, a scientific result, and to assess the scientific value of research.

Article 70/H. All citizens of the Republic of Hungary have the duty to defend the homeland. Subject to their general defense obligation, citizens are expected to undergo military service, armed or unarmed; or civil service on terms specified in the law. For the ratification of the law on military defense obligations, the votes of two-thirds of the MPs present are required.

Article 70/I. Every citizen of the Republic of Hungary bears the obligation to contribute to rates and taxes in accordance to income and wealth.

Article 70/J. In the Republic of Hungary, parents and guardians have the obligation of seeing to the education of minor children.

Article 70/K. Claims deriving from infringement of fundamental rights and objections to state (administrative) decisions in regard to compliance with duties may be brought to the Courts.

Chapter XIII—Principles Governing the Elections

Article 71.[14] Members of Parliament, the members of the representative bodies of villages, townships and of the districts of the Capital, the legally defined number of the members of the representative body of the Capital City, moreover, the Mayor in cases

14 Article 71 contains the wording formulated by Article 7 of Law No. LXIII of 1990.

defined in the law, are elected by direct secret balloting on the basis of the universal and equal right to vote. The members of the representative bodies of counties are elected by secret ballot by the meeting of delegates chosen by the village and city representative bodies. Separate laws provide for the election of the Members of Parliament, the Mayor and the members of the local representative bodies. For the adoption of these laws the votes of two-thirds of the MPs present are necessary.
Articles 72 and 73.[15]

Chapter XIV—The Capital City and Emblems of the Republic of Hungary

Article 74. The Capital of the Republic of Hungary is Budapest.
Article 75. The National Anthem of the Republic of Hungary is the poem by Ferenc Kolcsey entitled Hymn as set to music by Ferenc Erkel.
Article 76. The National Flag of the Republic of Hungary is a tricolor of red, white and green stripes of equal width running horizontally. The Coat of Arms of the Republic of Hungary is a vertically impaled shield coming to a point in the middle of the rounded base. Four red and four silver horizontal stripes alternate on the dexter. A triple green crest rises from the sinister base, its middle mound bearing a gold coronet transfixed by a silver patriarchal cross against the red field. Atop the shield rests the Holy Crown of St. Stephen. For the adoption of laws on the Coat of Arms, the Flag of the Republic of Hungary and the usage of those the votes of two-thirds of MPs are necessary.[16]

Chapter XV—Final Provisions

Article 77. The basic law of the Republic of Hungary is the Constitution. The Constitution and the constitutional provisions are equally binding on all organizations of society, all state organs and on citizens.[17]
Article 78. The Constitution of the Republic of Hungary comes into force on the day of its proclamation. The Government is to see to its implementation. The Government bears the obligation of submitting to Parliament the Bills necessary for the enactment of the Constitution.

AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF HUNGARY

Ruling No. 48/1991 (September 26) AB of the Constitutional Court
In the Name of the Republic of Hungary!

The Constitutional Court has passed the following ruling on the basis of a proposal

15 Articles 72–73 were repealed by para. (1), Article 38, of Law No. XXXI of 1990.

16 Sentence 2 of Article 76 inserted by Article 1 of Law No. XLIV of 1990, which also changed the numbering of what was originally para. (2) to para. (3).

17 Article 77 (3) was repealed by para. 1, Article 38, of Law No. XXXI of 1989.

submitted by the defense minister, the minister of justice, and the cultural, educational, scientific, sports, television and press committee of Parliament on the subject of the interpretation of some provisions of the Constitution—with separate opinions held by constitutional judges Dr. Geza Kilenyi, Dr. Peter Schmidt and Dr. Imre Voros relating to point 2 of part (B) of the ruling, as well as the parallel opinions held by constitutional judges Dr. Antal Adam, Dr. Geza Herczegh, Dr. Tamas Labady, Dr. Andras Szabo, Dr. Odon Tersztyanszky and Dr. Janos Zlinszky.

(A) On the basis of the interpretation of (3) of Article 40/B of the Constitution—with regard to interpreting Article 19 (3), Article 29, Article 30/A and Article 35 (1)—the Constitutional Court establishes the following as regards the powers of Parliament, the President of the Republic, and the Government concerning the control of the armed forces.

1. Each body listed in Article 40/B (3) of the Constitution shall take part in controlling the armed forces, according to the spheres of competence defined in the Constitution and without infringing them. No other body apart from the bodies defined in Article 40/B (3) has authority to control the armed forces. Executive powers independent of control cannot be established constitutionally. The commander of the Hungarian Defense Forces may only exercise his executive competence in accordance with, and in the framework of, the executive acts of the controlling bodies. The Commander of the Hungarian Defense Forces, and the commander of the Border Guards may issue an order in accordance with the acts of control of Parliament, the President of the Republic and the Government.

2. Parliament—with no amendments made in the Constitution—may only establish a new sphere of authority relating to the control of the armed forces and not contained in the Constitution for any of the controlling bodies, if such act does not reduce the sphere of authority under the Constitution of the other bodies vested with controlling powers under para. 40/B (3) of the Constitution.

3a. Article 29 (2) of the Constitution, under which the commander-in-chief of the armed forces is the President of the Republic, does not involve a regulation of competence. The Constitution does not provide for separate licenses and does not name licenses for fulfilling the function of the commander-in-chief within the sphere of authority relating to the control by the President of the Republic of the armed forces. From the point of view of constitutional law Article 29 (2) has significance in only as much as the President of the Republic must be invested at least with a traditional license of commander-in-chief.

The function as commander-in-chief of the President of the Republic constitutes part of the President's status in constitutional law, and does not involve a rank or an assignment in the Hungarian Defense Forces or the Border Guards. The commander-in-chief of the armed forces is outside the ranks of the armed forces; he controls them but is not their leader. In this way, the commander-in-chief is no service superior to any of the armed forces. The controlling powers of the commander-in-chief is exhaustively determined by the Constitution and by the law passed on the basis, and in

the framework, of the powers given by the Constitution; no other rights arise directly from Article 29 (2) of the Constitution.

3b. The powers of the President of the Republic relating to control of the armed forces do not differ under constitutional law from his other powers; here he may practice his licenses of appointment and approval under the same conditions as his other spheres of competence of appointment, approval and confirmation.

4. It is the Government's authority to control the operation of the armed forces. In Article 35 (1) (h) of the Constitution the phrase "control of operation" applies among the controlling powers to the executive power, and in line with the status under constitutional law of the Government exclusively invested with executive power it encompasses all spheres of competence concerning control of the armed forces which under the law do not fall expressly within the competence of Parliament or the President of the Republic. The competences of these three organs must encompass the operation of the armed forces without leaving a legal loophole. Control of the operation of the armed forces cannot be detracted by law from the competence of the Government; at the same time, the separation of powers and the legal status of the President of the Republic makes possible, by leaving the competence of the Government untouched, to broaden in theory the powers of both Parliament and the President of the Republic.

(B) According to the interpretation of Article 30/A (1) (h), (i) and (m) and Article 30/A (2) of the Constitution, the Constitutional Court establishes the following in connection with the legal authority of the President of the Republic as regards appointment and ministerial countersigning.

1. With the exception of the right of appointment determined by Article 48 of the Constitution, a countersigning by the prime minister or the competent minister is necessary for all appointments, promotions, confirmation in, or relief of, posts (hereinafter referred to as appointments) referred to the authority of the President of the Republic under the Constitution or a separate law, furthermore for approval within the competence of the President of the Republic. No act of the President of the Republic is valid without such countersigning. By giving its countersignature, the Government assumes political responsibility for the act of the President of the Republic before Parliament.

2. The President of the Republic must deny appointment or approval if he finds that the conditions specified in the relevant legal rules have not been fulfilled. Nevertheless, denial of an appointment or an approval will only be constitutional if the President of the Republic has well-founded grounds to infer that fulfillment of the proposal would seriously disrupt the democratic order of the state. From the latter aspect, the President of the Republic may exclusively review the proposal made for a given person in the case of an appointment, and solely review the content of the proposal in the case of an approval.

3. If the law stipulates that in the course of the process of appointment some organ—for example, a committee of Parliament—must hear the candidate or express its opinion in connection with the case, the hearing and taking a position are depositories of

the validity of the procedure and the President of the Republic must examine their materialization together with the legal preconditions of an appointment. The President of the Republic must consider the position taken by the organ participating in the procedure if it is expressly stipulated by law. Consideration in this case means the deliberation of that opinion before reaching a decision, but it will not set any conditions to the decision.

(C) The Constitutional Court establishes the following according to the interpretation of Article 31/A (1) of the Constitution:

1. The inviolability of the person of the President of the Republic is part of the legal status of the President of the Republic under constitutional law. By virtue of his inviolability, the President of the Republic assumes no political responsibility before Parliament, and his legal responsibility prevails exclusively under Article 31 (4), Article 31/A (2)–(6) and Article 32 of the Constitution.

2. Provision must be made in law about the immunity under criminal law of the President of the Republic. The content of such legislation shall be determined by Parliament as it deems best.

The Constitutional Court shall make this ruling public in the official Hungarian Gazette (Magyar Kozlony).

Act LVIII of 1991 on the entry into force of Article 32/D of the Constitution of the Republic of Hungary.

Para. 1. Article 32/D of the several times updated Act XX of 1949 on the Constitution of the Republic of Hungary, established by para. 26 of Act XL of 1990, enter into force as of the promulgation of this Act.

Para. 2. This Act shall enter into force on December 1, 1991. Law XX of 1991 on the Tasks and Scope of Local Governments, Local Government Organs, Commissioners of the Republic, and Some Centrally Controlled Organizations.[18]

Para. 44.[19] Para. 67, (1), (e) of Law III of 1952 on Civil Procedure (CP) will be replaced with the following provision: "(The following may proceed as attorneys in a court trial:) '(1) members of the body of representatives, the notary, the chief notary, the administrator of the office of the body of representatives, and the head and administrator of the district office in cases involving the local government or its organs; the administrator of the office of the Commissioner of the Republic in cases involving the Commissioner of the Republic;' (2) The term 'local council' in Para. 102, (1) and Para. 309, (3) of CP will be replaced with the following term: 'the mayor's office.' "

Para. 45. Clause (4) in Para. 349 of CP will be replaced with the following provision; at the same time the original numbering of clause (4) will be changed to (5):

"(4) In labor disputes at employers where no conciliation board can be formed, the obligee may turn directly to the Labor Court with a complaint."

Clause (1) of Para. 358 of CP will be supplemented with the following point (c):

18 This Law was passed by Parliament on May 28, 1991. Entry into force: July 23, 1991.

19 The other paragraphs of the Law do not contain provisions which affect Law III of 1952.

(No appeal lies in a labor dispute, unless the appeal)

"(c) contains an objection against decisions referred to in clauses (3) and (4) of Para. 349." Law XXIII of 1991 on Amending Law Decree No. 4/1983 on the Legal Profession.[20]

Para. 36.[21] Point (c) in clause (1) of Para. 67 of the Code of Civil Procedure (CP) will be replaced with the following provision:

(may act as legal attorneys in a case).

"(c) a lawyer and a lawyers' office"

Clause (1) of Para. 87 of CP will be replaced with the following provision:

"(1) Should the circumstances of the case so require, in the case of free legal assistance the court may, at the request of the party involved, appoint for the defendant a lawyer or a lawyer's office active at the seat of the court."

Act XXVI of 1991 on extension of the judicial revision of administrative decisions.[22]

Until the general introduction of administrative jurisdiction, Parliament passes the following Act on the execution of Section (2) of Para. 50 of the Constitution.[23]

Para. 6. Point (h) of Section (1) of para. 23 of the Code of Civil Procedure (CP) shall be replaced by the following provision:

(Issues falling within the competence of the County Court are the following:)

"(h) those administrative actions where the competence of the administrative organ of the first instance which has passed making the administrative decision to be revised by the court extends to the whole of Hungary."

Para. 7. Title of Chapter XX of CP shall be changed to "Legal actions concerning matters of state administration" and simultaneously Para. 324 of CP shall be substituted by the following provision: "Para. 324 (1) Provisions given in Chapters I–XIV must be applied by taking into consideration the following amendments in legal actions aimed at revisions of administrative decisions. In this Chapter the term 'administrative decision' means: (a) decisions of administrative bodies or of other organs authorized to manage administrative affairs in public administrative proceedings (Para. 3 of Act IV/1957); (b) decisions, as determined by statute, the rules, and other decisions of local authorities; (c) decisions of other bodies revision of which is ordered to be made by applying this Chapter by a separate Act. In the application of this Chapter the body defined in (a)–(c) points of section (2) (hereinafter: administrative body) and its decisions are called administrative proceedings."

Para. 8. Point (c) of Section (1) of para. 325 of CP shall be replaced by the following provision: (The following persons are excluded from settlement of the legal action—with the exception of cases set out in Paras. 13–15 and 21—and must not take part in these actions as judges:)

20 This Law was passed by Parliament on June 18, 1991. Entry into force: July 18, 1991.

21 The other paragraphs of the Law do not contain provisions which affect Act III of 1952 on Civil Procedure.

22 This act was adopted by the National Assembly at its session on June 26, 1991.

23 Paragraphs not mentioned here amend provisions different from the aforementioned ones.

"(c) former employees of the administrative body which made the decision, for two years from termination of their employment."

Para. 9. Para. 326 of CP shall be replaced by the following provision: "Para. 326: Competence of the Court is determined by the center of the authority of the first instance making the administrative decision. Exclusively the local courts operating at the center of the county courts—in Budapest the Central District Court—are authorized to manage legal actions falling within the competence of the local courts."

Para. 10. Section (2) of para. 328 of CP shall be replaced by the following provision: "(2) If it cannot be established which administrative body is to be sued, the party may—before starting the action—make a request for establishing this at any court (Para. 94.). The complaint must be attached to this request. If the request was not submitted to the competent court, this court is obliged to transfer it to the competent court together with the complaint."

Para. 11. Section (1) of para. 330 of CP shall be replaced by the following provision: "(1) The complaint must be submitted to the administrative body passing the decision of the first instance or to the competent court within thirty days from making known the decision. The administrative body is obliged to forward the complaint—and with the documents connected with the case—to the court within eight days from its receipt."

(2) Para. 330 of CP shall be supplemented with the following section (3) and at the same time the actual numbering of section (3) shall be changed to (4):

"(3) If the party asks for the suspension of the execution of the decision in the complaint, the court decides on this question within eight days from receipt of the complaint."

Para. 12. Sections (1) and (2) of para. 339 of CP shall be replaced by the following provision: "(1) Unless the Act provides otherwise the Court invalidates the unlawful decision and obliges the body having made the administrative decision to conduct new proceedings if it is necessary.

The court may change administrative decisions concerning the following:

(a) permitting or refusing adoption and declaring a juvenile adoptable

(b) ordering the boarding out of a juvenile and refusing a request aimed at termination of nurturing a juvenile in a boarding school

(c) decisions connected with parental custody rights, appointing or exempting guardians, or ordering their removal

(d) orders containing decisions relating to refusing registration into the birth/marriage register or giving personal data for the purpose of registration in the State Population Register, canceling, correction, modification and supplementing of such personal data, and refusing information about these data and refusal to put them in an official document

(e) refusing acceptance of a contract relating to support for life

(f) decisions relating to registration or refusing registration of rights and facts concerning a real estate, made by the Land Registration Office,

(g) decisions regarding determination tax and duty liabilities or any other liabilities to be considered as tax or duty according to a separate provision of law, and other payments

(h) decisions ordering placement of archival in a general archive, or protected museum

pieces in a public collection, or decisions forbidding transportation of protected museum pieces or cultural values abroad and decisions relating to carrying out an excavation at a real estate (site)

(i) decisions made in connection with matters of expropriation

(j) decisions connected with recognition of person as refugee

(k) refusing a request for unemployment benefit or ordering termination of the payment of this benefit

(l) decisions concerning requests for doing military service without weapons and for enrollment in civil service

(m) decisions containing orders connected with testimonials of time spent in interment, in deportation, in detention for reasons of public security and in the Soviet Union confined, and testimonials of restriction of the personal freedom of individuals listed in section (1) of Para. 1 of Government Decree No. 74/1991 (VI. 10)

(n) decisions concerning family allowance and social insurance decisions

(o) decisions concerning the delivery of property made by the Property Delivery Committee

(p) decisions made during juridical revision of decisions ordering occupation of a residence or a part of a residence

(q) in any cases permitted by law."

Para. 13. Section (1) of para. 340 of CP shall be replaced by the following provision:

"(1) Appeal given against a decision can be judged out of session by the court of second instance if neither of the parties ask for holding a session. The parties should be informed about this right of them."

Para. 14. Para. 341 of CP shall be replaced by the following provision:

"Para. 341 For actions aimed at revision of social insurance decisions the provisions contained in this Chapter should be applied with the following differences:

(a) the action against the decision should be commenced before the deadline determined in the social insurance provisions

(b) The action should be commenced against the social insurance organ of the first instance, even if the decision to be revised was made by the body of the second instance.

Para. 15. This decree shall come into force on the 15th day from its promulgation. Its provisions should also be applied to cases in progress. Point (h) of section (2) of Para. 11 of CP and in chapter XX of the CP, the expression "state administrative decision" shall be replaced by the expression "public administrative decision," the expression "action aimed at judicial revision of state administrative decision" shall be replaced by the expression "public administrative action." In Chapter XX of CP the expressions "state management body," "state management proceedings" and "state management document" shall be replaced by the expressions "public administrative body," "public administrative proceedings" and "public administrative document," respectively.

Act XLI of 1991 On Public Notaries.[24]—Repealed Provisions

24 The act was passed by Parliament on September 10, 1991. Entry into force: January 1, 1992.

Article 184. Simultaneously with the coming into effect of this Act, the following provisions shall be repealed:

(a) the last sentence of Article 201, paragraph (1) of the Code of Civil Procedure, and from the first and third sentences of Article 209, paragraph (1) the phrase "or the public notary," and paragraphs (3) and (4) of Article 210,

Amended Provisions

Article 185. The following provision takes the place of Article 208, paragraph (1) of the Code of Civil Procedure:

"(1) Preliminary evidence must be requested from the court where the legal proceedings are taking place. If the hearing of the case has not yet begun, preliminary evidence may be requested from the local court competent according to the place of residence of the petitioner, or from the local court on whose territory the evidence can be taken the most expediently."

The following provision takes the place of Article 209, paragraph (2) of the Code of Civil Procedure:

"(2) Concerning the ordering of preliminary evidence, it is possible to appeal only against a negative judgment by the court."

The following provision takes the place of Article 211, paragraph (3) of the Code of Civil Procedure:

"(3) As to the costs of preliminary evidence, the general rules relating to law costs must be taken as standard procedure."

THE CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN

(Adopted January 28, 1993.)

We, the people of Kazakhstan, being an inalienable part of the world community, proceeding from the stability of Kazakh statehood, acknowledging the priority of rights and freedoms of man, determined to create a democratic society and a law-abiding state, desiring to ensure civil peace and international harmony and a proper life for ourselves and our descendants, adopt the present Constitution and proclaim the following

Bases of the Constitutional System

First. The Republic of Kazakhstan is a democratic, secular, unitary state. The Republic of Kazakhstan as the form of statehood of the self-determined Kazakh nation shall provide equal rights for all its citizens.

Second. The territory of the Republic of Kazakhstan shall be integral, indivisible, and inviolable.

Third. The Republic of Kazakhstan shall acknowledge a man's life, freedom, and inalienable rights as the highest value, and it should exercise its authority in the interests of citizen and society.

Fourth. The people of Kazakhstan are the sole source of the Republic's state authority. The people shall exercise state authority personally or through their representatives. No groups among the people, no organization or individual, can arrogate the right to exercise state authority. The right to speak on behalf of the people of Kazakhstan shall belong only to the Supreme Soviet and to the President of the Republic, within the limits of their constitutional powers.

Fifth. The Republic of Kazakhstan shall guarantee equal legal opportunities to public associations which act within the frameworks of the constitution and laws of the Republic. The ideology of public associations cannot be established as official ideology.

Sixth. State authority in the Republic of Kazakhstan shall be based on the principle of its division into legislative, executive, and judicial powers. In accordance with that principle, state bodies shall act independently within their powers, cooperating with each other, using the system of restraints and counterbalances. Legislation shall proceed from the stability of the bases of the constitutional system. State authority shall be exercised on the basis of the Constitution and laws of the Republic.

Seventh. The Constitution shall possess supreme legal force, and its norms shall be

directly applied. Laws and other acts which contradict the provisions of the Constitution shall have no legal force.

Eighth. In the Republic of Kazakhstan the state language shall be the Kazakh language. The Pussian language shall be the language of international intercourse. The state shall guarantee preservation of the sphere of the use of the language of international intercourse and of other languages and shall take care of their free development. It shall be prohibited to limit rights and freedoms of citizens on account of their not having command of the state language or the language of international intercourse.

Ninth. The Republic of Kazakhstan shall possess the state's symbols—the Coat of Arms, the Flag, and the Anthem. The capital of the Republic of Kazakhstan is the city of Almaty.

Section I. Citizen, His Rights, Freedoms and Duties

Chapter 1. General Provisions

Article 1. The citizens of the Republic of Kazakhstan shall be guaranteed equality of rights and freedoms irrespective of their race, nationality, sex, language, social standing, property and official position, social origin, place of residence, attitude toward religion, creed, membership in a public association, or previously incurred criminal punishment. Any forms of discrimination against citizens shall be prohibited.

Article 2. Limitations in the implementation or rights and freedoms shall be permitted by the Constitution and laws of the Republic of Kazakhstan only for the purposes of ensuring rights and freedoms of other persons, public security, and defense of the constitutional system. At such times, the essence of constitutional rights and freedoms shall not be affected.

Article 3. International legal acts recognized by the Republic of Kazakhstan on rights and freedoms of a man and a citizen shall have priority before its laws in the territory of the Republic.

Chapter 2. Citizenship

Article 4. Every person in the Republic of Kazakhstan shall have the right of citizenship and of changing it. Grounds and procedures of acquisition, preservation, and loss of citizenship of the Republic shall be established by constitutional law. Deprivation of citizenship of the Republic of Kazakhstan or of the right to change citizenship as well as the expulsion of citizens from the Republic shall not be allowed. A person who is a citizen of the Republic of Kazakhstan shall not be recognized as being a citizen of another state except in cases stipulated by the present Constitution and interstate agreements of the Republic. All citizens, having been forced to leave the territory of the Republic, and also all Kazakhs residing in other states, shall be acknowledged to have the right to hold citizenship in the Republic of Kazakhstan along with the citizenship in other states, if that citizenship does not contradict laws of the states wherein those persons are naturalized.

Article 5. The Republic of Kazakhstan shall assist its citizens who reside outside the

borders of its territory and protect their rights and freedoms. A citizen of the Republic of Kazakhstan cannot be handed over to a foreign state unless the case is specially stipulated by international legal acts, which are recognized by the Republic and by its interstate agreements.

Article 6. Persons who reside in the territory of the Republic of Kazakhstan but who are not its citizens shall enjoy all rights and freedoms, and also bear responsibilities, established by the Constitution, laws, and interstate agreements of the Republic, barring exceptions stipulated by the Republic's laws and interstate agreements.

Article 7. The Republic of Kazakhstan shall have the right to provide asylum to foreign citizens and persons without citizenship who become victims of violations of human rights.

Chapter 3. Civil Rights and Freedoms

Article 8. The right to live is a natural and an inalienable right of every person. No one can be deprived of life arbitrarily. Capital punishment may be imposed only in exceptional cases by a court sentence. Each person sentenced to capital punishment shall have the right to appeal for pardon.

Article 9. The honor and dignity of a man and a citizen shall be inviolable.

Article 10. A citizen of the Republic shall have the right to freedom of speech, creed, and their free expression. Nobody can be forced to express his views or be persecuted for having convictions.

Article 11. A citizen of the Republic shall have the right to receive and disseminate any information through any legitimate means of his choice.

Article 12. A citizen of the Republic shall be guaranteed freedom of conscience—the right to independently determine his attitude toward religion, to profess any religion or to profess none, to disseminate views connected with his attitude toward religion, and to act in accordance with those views.

Article 13. A citizen of the Republic shall have the right to freely move and choose his place of residence, as well as the right to freely leave the territory of the Republic and to return.

Chapter 4. Political Rights and Freedoms

Article 14. Citizens of the Republic shall have the right, both directly and through their representatives, to participate in the management of state affairs and in the discussion and adoption of laws and decisions of state and local significance.

Article 15. Citizens of the Republic shall be guaranteed freedom of peaceful gatherings, meetings, processions, pickets, and demonstrations.

Article 16. Citizens of the Republic shall have the right to form public associations on the rights of free expression and community of interests for implementing their rights and freedoms.

Article 17. Citizens of the Republic shall have the equal right to practice public services. Requirements applied to a candidate in a position of public servant shall depend only on the nature of his professional duties.

Chapter 5. Economic and Social Rights

Article 18. A citizen of the Republic shall have the right to be a proprietor. An owner at his disposition shall possess, use, and manage the property belonging to him. The use of property should not damage the environmental sphere or violate rights protected by the legal interests of citizens, legal entities, and the state.

Article 19. A citizen of the Republic shall have the right to work, which includes the right of everybody to receive an opportunity to freely work as an independent producer or under labor agreement in accordance with his wishes, capabilities, and professional training. The freedom to enter into a labor agreement shall be guaranteed. A citizen of the Republic shall have the right to working conditions meeting security and sanitary requirements, and also to social protection from unemployment. A reward for labor should not be less than the minimal wages set by law. Forced labor shall be prohibited, except in carrying out a court-imposed sentence, or the functioning of the law on the state of emergency.

Article 20. Citizens of the Republic shall have the right to go on strike.

Article 21. A citizen of the Republic shall have the right to rest. The state shall determine the duration of the maximum working day, minimal weekly rest, and annual paid vacation, as well as other main terms of the implementation of the right to rest.

Article 22. A citizen of the Republic shall have the right to housing. The state shall promote implementation of the right to housing by encouraging house-building, granting houses for use, and by the sale of dwellings from the state housing fund.

Article 23. A citizen of the Republic shall have the right to health protection. This right shall be ensured by free-of-charge medical service, provided in state institutions of health care. To render paid medical service shall be allowed on the basis and under procedures stipulated by law. The Republic of Kazakhstan shall assist in the development of the system of private medical services, shall encourage activity, and shall promote the strengthening of health and the development of physical culture and sports.

Article 24. A citizen of the Republic shall have the right to education. This right is ensured by free-of-charge secondary, special, and higher education in state educational institutions. Paid education of citizens shall be allowed on the basis and under procedures stipulated by law. The Republic of Kazakhstan shall promote the development of a private system of education. Organizations and individuals, encouraging the development of education, science, and culture, shall enjoy state support. The state shall provide the prior development of education, science, and culture.

Article 25. A citizen of the Republic shall have the right to social support in his old age, in case of disease, loss of working capability, as breadwinner of the family and in other cases stipulated by law.

Article 26. A citizen of the Republic shall have the right to an environment favorable for life and health.

Article 27. Citizens of the Republic shall be guaranteed the freedom of creative, scientific, and technical work.

Chapter 6. The Main Duties [of Citizens]

Article 28. Implementation of the rights and freedoms of a citizen of the Republic of Kazakhstan shall be inseparable from his duties, the performance of which is necessary for ensuring personal, public, and state interest.

Article 29. A citizen of the Republic of Kazakhstan must observe the Constitution and laws of the Republic and respect the rights, freedoms, honor, and dignity of other citizens. A citizen of the Republic must respect the state symbols—the Coat of Arms, the Flag, the Anthem.

Article 30. Citizens of the Republic of Kazakhstan must pay legally established taxes and dues.

Article 31. The defense of the Republic of Kazakhstan shall be a sacred duty of every citizen of the Republic. Citizens of the Republic shall perform military service in the order and forms established by law.

Chapter 7. Guarantees of Rights and Freedoms

Article 32. No one can deprive a citizen of any rights and freedoms or limit them, otherwise than in accordance with the present Constitution. Laws and other normative acts not published in the established way shall not be applied, and infringement upon a citizen's honor and dignity shall be prohibited. Collection, use, and dissemination of information of a personal character without consent of a citizen shall be allowed only in cases and according to procedures directly established by law. State bodies, public associations, and authorized officials must provide access for every citizen to documents, decisions, and other materials affecting his rights and interests. Detention, examination, or search, as well as any other limitation of a personal freedom, shall not be admitted except in cases and orders stipulated by law. No person can be subjected to torture, cruel punishment, or humiliating treatment.

Article 34. A citizen's dwelling shall be inviolable. Deprivation of a dwelling, intrusion into it, carrying out of a search shall not be admitted except in cases and with the observance of guarantees established by law.

Article 35. A citizen of the Republic of Kazakhstan shall have the right to necessary defense.

Article 36. The Republic of Kazakhstan shall guarantee judicial protection of all rights and freedoms fixed in the Constitution and laws. No one can be deprived of the right to consideration of his case with the observance of all requirements of law and justice by a competent, independent, and impartial court.

Article 37. Everybody shall be equal before the law and the court.

Article 38. No one except for the court shall find a person guilty of the commission of a crime and impose punishment on him. A person shall be presumed innocent until his guilt is ruled on by the verdict of the court coming into force. The accused does not have to prove his innocence. Any doubts about the guilt of an accused shall be interpreted to his favor.

Article 39. A law which establishes or increases legal responsibility shall not have

retractable force. If after the commission of an offense, the responsibility for it is repealed or alleviated, a new law shall be applied. Application of the criminal law by analogy shall not be admitted. No one shall be tried more than once for the same offense.

Article 40. Any decision and actions of state bodies, public associations, government officials, and other people which abridge or limit a citizen's rights can be appealed against in court. To use a complaint against the person who brought the complaint or in whose interests it was brought shall not be allowed.

Article 41. Evidence which has been obtained illegally shall not have legal force.

Article 42. No person shall be obliged to testify against himself, his (or her) spouse, or close relatives. Clerical officials shall not be obliged to testify against fellows in faith who trust them.

Article 43. A citizen shall have the right to qualified legal assistance and defense, carried out in accordance with law and guaranteed by the state. The activity of persons with the aim of defending other citizens and rendering them legal assistance shall be independent and self-sufficient. Interference with such activity shall not be admitted and shall entail responsibility according to law. A defense counsel shall not have the right to divulge information which became known to him in connection with legal assistance without consent of his client.

Article 44. Temporary limitations of rights and freedoms may be established in a period of state emergency according to law and should not be directly emphasized in the law on introducing a state of emergency. During a period of emergency, changes in the Constitution of the Republic of Kazakhstan, laws on elections and on court proceedings, procedures for referendums and elections to limit the powers and activities of the Supreme Soviet and courts, and of rights and freedoms stipulated by Articles 8, 9, 12, 22, 33, 35, 36, 39, shall not be allowed.

Section II. Society: Bases of Its System

Chapter 8. Property and Entrepreneurship

Article 45. The economy of the Republic of Kazakhstan shall be based on various forms of property. The state shall ensure all subjects the equality of property before the law. Objects and subjects of property, their main types and forms, the limits of exercising rights by the owners, and guarantees of their protection shall be determined by law.

Article 46. Land, its extractive minerals, rivers and lakes, flora and fauna, and other natural resources shall be the exclusive property of the state. Limits and subjects of implementation on behalf of the state or of an owner's powers on the stated objects shall be determined by law.

Article 47. Private property shall be inviolable. No one can have his property confiscated except by a court's decision. Requisition can be applied only in exclusive cases, directly stipulated by law. The Republic of Kazakhstan shall protect the proprietary

rights of its citizens and legal entities or their property situated within the territory of other states.

Article 48. The state shall guarantee the freedom of entrepreneurial activity and ensure its defense and support. Monopolistic or any other activity which is aimed at limiting or eliminating lawful competition, obtaining groundless advantages, and abridging rights and legal interests of consumers shall not be allowed.

Article 49. Entrepreneurial activity of foreign citizens and legal entities and of persons not admitted to citizenship shall come under the protection of the Republic of Kazakhstan and shall be exercised on its territory according to terms established for citizens of the Republic, barring exceptions stipulated by laws and interstate agreements of the Republic.

Chapter 9. Family

Article 50. A man and a woman who reach the age defined by law shall have the right to marry and set up a family. Marriage shall be based on a free consent and equality of both parties.

Article 51. The duties of parents and persons performing their functions shall be to support, bring up, and educate children. Character and forms of upbringing and educating should not abridge the interests of a child. Able-bodied children must take care of their parents and render assistance to them.

Article 52. Family, motherhood, fatherhood, and childhood shall be under the protection of society and the state. The state shall provide support, upbringing, and education of orphans and children deprived of parental guardianship and promote charitable activities regarding children.

Chapter 10. Public Associations

Article 53. Public associations in the Republic of Kazakhstan shall be acknowledged as being political parties, mass movements, professional, creative unions, religious, and other associations of citizens. The state shall observe and protect the rights and legal interests of public associations.

Article 54. The interference of state bodies and officials with the activities of public associations as well as the interference of public associations with the activities of state bodies and officials shall not be permitted. It is prohibited to impose the functions of state bodies on public associations. The activities of public associations pursuing political purposes shall not be permitted in the bodies of state power, the public prosecutor's department, the courts, the armed forces, or state enterprises, establishments, and organizations.

Article 55. The establishment and activities of public associations proclaiming or realizing in practice racial, national, social, or religious animosity, class exclusiveness calling for the violent overthrow of the constitutional order, and encroachment upon the territorial integrity of the Republic shall be prohibited. In the territory of the Republic of Kazakhstan it is prohibited to create armed troops, secret societies, and secret associations not stipulated by legislation or the Republic.

Article 56. Parties shall promote the formation and expression of citizens' political will. The formation, cessation, and functions of political parties shall be regulated by law. In the territory of the Republic of Kazakhstan the activities of political parties of other states shall not be permitted.

Article 57. Trade unions shall be formed for the protection of labor, for social-economic rights, for interests of their members, and for the defense and improvement of working conditions.

Article 58. Religious associations shall be separate from the state. The state should not favor any religion or atheism. Creation of political parties with a clerical foundation shall not be allowed. Religious associations should not pursue political aims and tasks.

Section III. The State, Its Bodies and Institutions

Chapter 11. General Provisions

Article 59. The state shall be an official representative of people and shall express and carry out its will through its bodies and institutions.

Article 60. State service in the Republic of Kazakhstan shall be based on the responsibility of state officials before the people of the Republic and before every citizen on equal rights upon entering the state civil service and exercising its duties. State officials are obliged to observe the rights and freedoms of citizens and to support the authority of the state and its bodies.

Chapter 12. The Supreme Soviet

Article 62. The Supreme Soviet shall be the only legislative and the highest representative body of the Republic of Kazakhstan. The functioning of the Supreme Soviet shall be determined by the constitutional law.

Article 63. The Supreme Soviet of the Republic of Kazakhstan shall:

(1) adopt the Constitution of the Republic and introduces changes and amendments into it;

(2) adopt laws and other decisions and exercise control over their implementation;

(3) provide the official interpretation of the laws of the Republic;

(4) adopt resolutions on changing the borders of the Republic of Kazakhstan; establish procedures for the solution of questions of the administrative-territorial arrangement of the Republic;

(5) approve and exercise control over the execution of the republican budget, introduce changes into the budgets and establish taxes and dues;

(6) determine the monetary system of the Republic of Kazakhstan;

(7) decide to hold public referenda;

(8) solve the questions of state loans and rendering economic and other means of assistance by the Republic;

(9) elect coordinating, operating, supervising, and other state bodies;

(10) give its consent to the appointment of the Prime Minister, Deputy Prime Minister, Ministers of Foreign Affairs, Defense, Finance, Internal Affairs, Chairman of the Committee of National Security, and Heads of diplomatic representation of the Republic of Kazakhstan by the President of the Republic;

(11) elect the Constitutional Court of the Republic of Kazakhstan;

(12) elect the Supreme Court and High Court of Arbitration of the Republic of Kazakhstan and determine the procedure for establishing lower-ranking courts;

(13) appoint the Prosecutor-General of the Republic of Kazakhstan;

(14) appoint the Chairman of the National Bank of the Republic of Kazakhstan;

(15) according to the procedure stipulated by the Constitution and the law of the Republic, relieve from office the chairman and the judges of the Constitutional Court, the Supreme Court, the High Court of Arbitration, the Prosecutor-General, and the Chairman of the National Bank of the Republic of Kazakhstan;

(16) institute state awards, establish honorary and special titles, and dispense the highest diplomatic ranks and military titles of the Republic of Kazakhstan;

(17) promulgate amnesty acts;

(18) ratify and denounce international treaties of the Republic of Kazakhstan;

(19) confirm decrees on the introduction of state emergencies issued by the President of the Republic;

(20) decide questions of war and peace;

(21) exercise other powers entrusted by the Constitution of the Republic.

Article 65. The Chairman of the Supreme Soviet of the Republic of Kazakhstan shall be elected by secret ballot, with a majority of votes out of the total number of deputies, at the first session of the Supreme Soviet from those deputies who have command of the state language. The Chairman of the Supreme Soviet shall:

(1) convene the sessions of the Supreme Soviet;

(2) lead the preparation of questions to be considered by the Supreme Soviet;

(3) preside at sessions of the Supreme Soviet;

(4) recommend to the Supreme Soviet candidates for the positions of deputy and Chairman of the Supreme Soviet;

(5) on behalf of the Supreme Soviet sign interparliamentary agreements;

(6) carry out other authorized acts on questions of Supreme Soviet activities entrusted to him by the Constitution and the laws of the Republic of Kazakhstan.

Article 66. Deputy Chairmen of the Supreme Soviet of the Republic of Kazakhstan shall carry out the Chairman's empowerment some of his functions empowered to the Chairman and substitute for him in case of his absence or unavailability to execute his duties.

Article 67. A deputy of the Supreme Soviet of the Republic of Kazakhstan shall be a representative of the people of the Republic. A deputy of the Supreme Soviet of the Republic of Kazakhstan shall have the right to express his opinion and vote according to his convictions. At sessions of the Supreme Soviet and its bodies a deputy must personally exercise his right to vote.

Article 68. A deputy of the Supreme Soviet of the Republic of Kazakhstan cannot occupy any other paid position outside the Supreme Soviet, not be a deputy of any oath body represented by it or conduct entrepreneurial activity.

Article 69. A deputy of the Supreme Soviet of the Republic of Kazakhstan shall be inviolable: he cannot be arrested, taken into custody by force, subjected to court-imposed administrative removal or limitation, or be called to criminal responsibility without the consent of the Supreme Soviet. He cannot be detained, with the exception of being arrested at the scene of a crime. The legal status of a deputy of the Supreme Soviet of the Republic of Kazakhstan shall be determined by the appropriate constitutional law.

Article 70. The session of the Supreme Soviet of the Republic of Kazakhstan shall be opened and closed at its plenary meeting. Sessions of the Supreme Soviet shall be open. At the proposal of one-fifth of the deputies or of the Chairman of the Supreme Soviet, and by a majority of votes of the total number of deputies, a session of the Supreme Soviet may be closed.

Article 71. The deputies of the Supreme Soviet of the Republic of Kazakhstan, the President, the Cabinet of Ministers, the Supreme Court, and the High Arbitration Court of the Republic of Kazakhstan shall enjoy the right of legislative initiative.

Article 72. The laws and other resolutions of the Supreme Soviet of the Republic of Kazakhstan shall be adopted by a majority of the total number of its deputies. The Constitution of the Republic of Kazakhstan shall be adopted by a majority of not less than two-thirds of the total number of deputies of the Supreme Soviet.

Article 73. Draft laws and other important issues of state life which are under the competence of the Supreme Soviet of the Republic may be submitted for nationwide discussion.

Article 74. A referendum shall be conducted for the adoption of laws and resolutions on the most important issues of state life by the citizens of the Republic of Kazakhstan. The organization and conduct of the referendum shall be established by constitutional law of the Republic of Kazakhstan.

Chapter 13. The President

Article 75. The President shall be the head of the Republic of Kazakhstan and shall lead the united system of the Republic. The President shall be the guarantor of citizens' rights and liberties and constitutional and other laws.

Article 76. The President of the Republic of Kazakhstan shall be elected for a term of five years. The President shall assume the responsibilities of his office on taking an oath at the Supreme Soviet meeting on the third Wednesday of January: "I do solemnly swear to serve faithfully the people of Kazakhstan, to strictly follow the Constitution and the laws of the Republic, to guarantee citizens' rights and liberties and to conscientiously execute the high duties of the President of the Republic of Kazakhstan I have been entrusted with." The outgoing President's authority will cease when the newly elected President takes office. The same person shall serve as President for no more than two consecutive terms.

Article 77. The President cannot be a deputy in a representative body of the Republic, hold office in other state bodies and public associations, or be involved in entrepreneurial activity.

Article 78. The President of the Republic of Kazakhstan shall:

(1) take necessary measures to protect the constitutional system and sovereignty of the Republic, its security and territorial integrity, and the rights and freedoms of citizens;

(2) sign laws of the Republic of Kazakhstan, be entitled to return a law with his objections to the Supreme Soviet for further discussion and a vote not later than two weeks after the presentation of the law for signing. If the Supreme Soviet approves the previously taken decision with the consent of two-thirds out of the total number of its deputies, the President shall sign the law. A law which is not returned within the specified period shall be considered signed;

(3) appoint with the consent of the Supreme Soviet the Prime Minister, Deputy Prime Ministers, Ministers of Foreign Affairs, Defense, Finance, Internal Affairs, the Chairman of the National Security committee, and chief diplomatic representatives of the Republic of Kazakhstan; exercise guidance over the activities of the Cabinet of Ministers; based on the recommendations of the Prime Minister, determine the members of the Cabinet of Ministers; form and abolish ministries, state committees, and departments; either cancel or wholly or partly suspend the realizing of acts of the Cabinet of Ministers, ministries, state committees, and departments;

(4) form the Security Council and other consultative bodies;

(5) establish state programs;

(6) determine the terms and provisions of the national currency;

(7) after consulting with the Supreme Soviet, decide on holding a referendum;

(8) represent the Republic of Kazakhstan in international affairs; conduct negotiations, and the signing of treaties on behalf of the Republic; ensure the observance of treaties and commitments undertaken by it;

(9) receive the credentials and letters of recall of diplomatic and other representatives of foreign states accredited to him;

(10) appeal to the people of the Republic of Kazakhstan and its Supreme Soviet, submit annual messages to the Supreme Soviet on the situation in the Republic, and periodically inform it about the Republic's most important domestic and foreign issues;

(11) introduce to the Supreme Soviet of the Republic of Kazakhstan candidates for the Chairman and judges of the Constitutional Court, the Supreme Court, High Arbitration Court, the Prosecutor-General, the Chairman and judges of the Constitutional Court, the Supreme Court, High Arbitration Court, the Prosecutor-General, the Chairman of the National Bank of the Republic of Kazakhstan, and submit to the Supreme Soviet proposals on the dismissal of these officials;

(12) adopt measures on strengthening the defense potential of the state and perform functions of the Commander-in-Chief of the Armed Forces of the Republic of Kazakhstan;

(13) confer state awards of the Republic of Kazakhstan and the highest diplomatic and military ranks and honorary and special titles of the Republic of Kazakhstan;

(14) in accordance with the law, solve issues of citizenship of the Republic of Kazakhstan, and the granting of asylum;

(15) issue acts of pardon;

(16) in conformity with the law, introduce states of emergency as provisional measures exclusively for ensuring security of citizens and protection of the constitutional system;

(17) perform other authorized acts in accordance with the Constitution and the laws of the Republic of Kazakhstan.

The President shall not be entitled to delegate his authorities as head of state to any governmental bodies or officials.

Article 79. The President of the Republic shall issue decrees, resolutions, and instructions which will be compulsory on the whole territory of the Republic on the basis of and for the functioning of the Constitution and the laws of the Republic of Kazakhstan.

Article 80. The President of the Republic of Kazakhstan shall be inviolable.

Article 81. The Vice President of the Republic of Kazakhstan shall be elected together with the President of the Republic, and he shall perform some of the functions of the President by his empowerment and substitute for him in case of his absence or the impossibility of his carrying out his duties. The Vice President shall not be entitled to be a deputy of a representative body of the Republic, hold other offices in state bodies of the Republic, or exercise entrepreneurial activity. The Vice President shall be inviolable.

Article 82. The President and the Vice President of the Republic of Kazakhstan shall have the right to resign in case of their inability, in their opinion, to perform their authorized duties. Resignation of the President shall be considered accepted if it is voted on by not less than two thirds out of the total number of deputies of the Supreme Soviet.

Article 83. In case of the President's resignation or death, his powers shall devolve to the Vice President. If the Vice President is unable to assume the President's duties, they shall be transferred to the Chairman of the Supreme Soviet. In such cases, presidential elections should be held within two months. In case of the Vice President's resignation or death, the President by agreement with the Supreme Soviet shall appoint a new Vice President.

Chapter 14. The Cabinet of Ministers

Article 84. The Cabinet of Ministers shall be the government of the Republic of Kazakhstan and shall be authorized to solve questions of state management. The legal status and powers of the Cabinet of Ministers shall be determined by constitutional law. Members of the Cabinet of Ministers cannot be deputies of a representative body, occupy other paid positions in state bodies and public associations, or carry out entrepreneurial activities.

Article 85. The Cabinet of Ministers shall be accountable to the President of the Republic of Kazakhstan. The Cabinet of Ministers shall resign when the newly elected President assumes office. The Cabinet of Ministers shall have the right to resign to

the President of the Republic when it considers itself unable to perform its functions. Every member of the Cabinet of Ministers shall have the right to apply for retirement.

Article 86. The Cabinet of Ministers shall issue acts compulsory on the entire territory of the Republic on the basis of, and at the execution of, the Constitution, the laws of the Republic, and decrees of the President of the Republic of Kazakhstan.

Article 87. The Prime Minister shall directly manage the activities of the Cabinet of Ministers, sign resolutions of the Cabinet of Ministers, issue orders, and perform other functions entrusted to him.

Article 88. Members of the Cabinet of Ministers shall be accountable to the Supreme Soviet on questions of administering the laws of the Republic of Kazakhstan. The Supreme Soviet of the Republic shall have the right to hear a report of any member of the Cabinet of Ministers on questions of performing those laws. In cases when the laws of the Constitution are violated by a member of the Cabinet of Ministers, the Supreme Soviet shall have the right to appeal to the President on his early dismissal from his position.

Chapter 15. Territorial Organization of State and Local Management

Article 89. For the purposes of realizing state management, the territory of the Republic of Kazakhstan shall be divided into administrative-territorial units established by law.

Article 90. Such administrative-territorial units shall be independent in administering local affairs within the limitations established by laws of the Republic. The solution of questions of local importance shall be executed by local representative and executive bodies. They shall ensure realization of the Constitution, laws, and decrees of the President and Cabinet of Ministers of the Republic of Kazakhstan.

Article 91. Representative bodies of the population of the appropriate administrative-territorial units shall be elected for terms of five years. The competence of local representative bodies, their formation and activities, the number of deputies and their legal status shall be established by law.

Article 92. The Head of the local executive body shall directly represent the President of the Republic in the corresponding administrative-territorial unit and exercise in his territory the functions of state management. The Head of the local executive body shall be appointed to that position and relieved of it by the President, as established by law. The competence of the local executive body, its formation, and activity shall be established by law.

Article 93. Local representative and executive bodies shall decide within their competence those acts that are compulsory within the corresponding territory. Decisions of local representative bodies not consistent with the Constitution and laws of the Republic of Kazakhstan, may be overturned in the courts or by orders established by law. Decisions of local executive may be overturned by the higher-ranking executive bodies, by the President of the Republic, or by the courts.

Article 94. Authorities of the local representative bodies may be removed from office

before the completion of their terms by the Supreme Soviet of the Republic of Kazakhstan, as established by law.

Chapter 16. The Courts

Article 95. Judicial power in the Republic of Kazakhstan shall be vested in the Constitutional Court, the Supreme Court, the High Arbitration Court and lower-ranking courts established by law. No other governing body, official or person shall have the right to perform the functions of the judiciary. The Constitutional Court shall be the highest judicial power to defend the Constitution of the Republic of Kazakhstan. The Supreme Court and the High Arbitration Court shall be the highest judicial bodies on questions of their competence and shall supervise lower-ranking courts. The status of courts and judges of the Republic of Kazakhstan shall be determined by constitutional laws. The structure and procedures of the courts shall be determined by law. Setting up and establishing extraordinary, special courts and judgeships shall not be allowed.

Article 96. Judicial power shall be carried out on behalf of the Republic of Kazakhstan and shall be aimed at protecting the rights, freedoms, and final authority on questions of legitimacy and justice of the Constitution of the Republic of Kazakhstan.

Article 97. Judicial power shall cover all matters and disputes arising on the basis of this Constitution, laws, and other acts, international contracts, and other commitments of the Republic of Kazakhstan.

Article 98. The courts shall consider legal issues on the basis of principles of legitimacy and directness, with the observance of proper language of legal proceedings, under conditions of publicity, competition, and equality of rights of both parties, independence of judges, and open evaluation of evidence by them when pronouncing their judgments. Consideration of cases at closed court sessions shall be allowed when public hearings may lead to divulgence of state or commercial secrets or when it is necessary to protect the personal or family life of citizens from publicity. Persons participating in cases who have no command of the language of legal proceedings shall be provided with translations and shall be given the right to speak their mother tongue in the court. Matters in the courts shall be considered collectively. In cases directly indicated by law, consideration of the matter by an individual judge shall be permitted. The order of legal proceedings shall be determined by law. The creation of special forms of legal proceedings shall not be allowed.

Article 99. Resolutions and requirements of courts shall be compulsory for the functioning of all bodies, enterprises, establishments, organizations, public associations, officials, and citizens to whom they appeal. The failure to adhere to such resolutions and requirements shall entail responsibility before the law.

Article 100. The plenipotentiary term of judges in the Republic of Kazakhstan shall be ten years. Judges may be relieved of their duties ahead of schedule only on account of physical inability which prevents them from participating in court proceedings and by reason of their own legal violations. Judges may be deprived of their powers ahead of schedule as established by law.

Article 101. Judges shall be independent and subordinate only to the Constitution and

laws of the Republic of Kazakhstan. Courts shall have no right to implement the law in ways that contradict the Constitution of the Republic of Kazakhstan. If a court considers that the law or any other normative act which is to be applied to it contradicts the Constitution of the Republic of Kazakhstan, it shall suspend legal proceedings in the case and appeal to the Constitutional Court of the Republic of Kazakhstan with a recommendation to declare this law or act unconstitutional. Any interference in the court's executive of justice shall not be permitted and shall entail responsibility before the law. In specific cases, judges shall not be held accountable for questions of procedure in the execution of justice.

Article 102. A judge's position shall be incompatible with the mandate of a deputy or the holding of posts in other state bodies, membership in a public association, pursuit of political objectives, or entrepreneurial activities.

Article 103. Judges shall be inviolable: a judge shall not be arrested, subjected to custody, to measures of administrative punishment imposed by a court, or called to criminal responsibility without the consent of the body which elected him. He should not be detained except in cases of being caught at the scene of a crime.

Article 104. The state shall guarantee the inviolability of judges and provide appropriate social, material, and other guarantees of their independence and status.

Article 105. The right to qualified legal assistance and protection shall be acknowledged at any stage of legal proceedings.

Chapter 17. The Public Prosecutor's Department

Article 106. The Public Prosecutor's department within its competence shall supervise the precise and uniform performance of laws in the territory of the Republic of Kazakhstan. As stipulated by law, the agencies of the Public Prosecutor's Department shall execute criminal prosecution and take part in legal proceedings.

Article 107. The agencies of the Public Prosecutor's department shall exercise their powers independently of other state bodies and officials, and shall solely obey the law. The position of a prosecutor shall be incompatible with the mandate of a deputy, the holding of posts in other state bodies, membership in a public association, the pursuit of political aims, or entrepreneurial activities.

Article 108. The sole and centralized system of agencies of the Public Prosecutor's department shall be headed by the Public Prosecutor-General of the Republic of Kazakhstan, who is appointed by the Supreme Soviet for a term of five years. Lower-ranking public prosecutors shall be appointed and removed from office by the Prosecutor-General. The competence, structure, and activities of agencies of the Public Prosecutor's department and the legal status of public prosecutors shall be determined by law.

Chapter 18. Elections

Article 109. Election of deputies of the Supreme Soviet, of the President and of local representative bodies shall be held on the basis of the universal, equal, and direct right to vote by secret ballot.

Article 110. Elections shall be universal: all citizens of the Republic of Kazakhstan who have reached the age of 18 shall have the right to vote. Citizens ruled incapable by the court and persons kept in places of imprisonment shall not participate in elections.

Article 111. Elections shall be equal: each citizen shall have one vote, and candidates shall participate in elections on an equal footing.

Article 112. Elections shall be direct: the deputies of the Supreme Soviet, the President, the deputies of local representative bodies shall be elected by citizens by direct vote.

Article 113. Voting at elections shall be secret; control over voters' exercise of the franchise shall not be allowed.

Article 114. A citizen of the Republic of Kazakhstan, not younger than thirty-five years of age and not older than sixty-five years of age, who has been permanently residing within the territory of the Republic not fewer than ten years, and who has a perfect command of the state language may be elected President. A citizen of the Republic of Kazakhstan who has been permanently residing within the territory of the Republic of Kazakhstan not fewer than ten years and who speaks the state language may be elected Vice President. The Vice President of the Republic shall be elected together with the President of the Republic of Kazakhstan.

Article 115. A citizen of the Republic who has reached the age of 25 may be elected as a deputy to the Supreme Soviet of the Republic of Kazakhstan, a citizen of the Republic who has reached the age of 20—as a deputy of a local representative body. A citizen of the Republic of Kazakhstan may be a deputy to only one representative body of the Republic of Kazakhstan.

Article 116. Elections for President of the Republic of Kazakhstan shall be on the first Sunday in December and should be held concurrently with the election of the Supreme Soviet of the Republic of Kazakhstan.

Article 117. Preparation for elections shall be conducted openly and with publicity. Citizens and political parties and other public associations registered in the manner established by law shall be guaranteed the opportunity to freely nominate their candidates after thorough discussion and campaigns for or against their election.

Article 118. Arranging and holding elections of deputies to the Supreme Soviet, of the President, of deputies of local representative bodies, and the powers of electoral commissions shall be determined by constitutional laws.

Chapter 19. Finances

Article 119. The financial system of the Republic of Kazakhstan shall consist of the budget and financial resources of state enterprises, establishments, and organizations. The Supreme Soviet of the Republic may establish goal-oriented financial funds and determine sources of their formation.

Article 120. The budgetary system of the Republic of Kazakhstan shall consist of the republican and local budgets. In the territory of the Republic of Kazakhstan a unified budgetary-financial, tax, monetary credit, and currency and price policy shall be pursued; a unified tax service shall function.

Article 121. The banking system in the Republic of Kazakhstan shall form the National Bank of the Republic of Kazakhstan, accountable to the Supreme Soviet and to the President of the Republic and to state and private banks.
Article 122. The state shall create special monetary funds designed for economic, social, pension, medical, and other kinds of state support.
Article 123. The state shall render assistance to the development of nonstate forms of insurance and banking.

Chapter 20. Defense and Security

Article 124. Defense of the sovereignty and territorial integrity of the Republic of Kazakhstan shall be carried out by its Armed Forces. The structure and duties of military service and the status of servicemen of the Republic shall be determined by law.
Article 125. Protection of state and public security and the legal order shall be entrusted to governing bodies of internal affairs, national security, and the republican Guard. Their status and activities shall be determined by law.
Article 126. The use of the Armed Forces, the republican Guard, or organs of internal affairs and security to impede or illegally limit the activities of bodies of state authority, the rights and freedoms of citizens, or other unconstitutional purposes shall be considered a grave crime.

Section IV. Guarantees of Observance of the Constitution

Chapter 21. Promotion of the Stability of the Constitution and Protection of Its Provisions

Article 127. Execution of the principles and provisions of the Constitution of the Republic of Kazakhstan shall be ensured by the democratic organization of the society and state, by the highest legal power of the Constitution, and by the superior authority of law.
Article 128. The stability of the Constitution shall be ensured by specific legal provisions as well as by constitutional laws.
Article 129. The Constitution may be changed and amended by not less than a two-thirds vote out of the total number of the deputies of the Supreme Soviet. Amendments concerning the bases of the constitutional system shall be approved by not less than a three-fourths vote of the total number of deputies of the Supreme Soviet. Laws stated in the Constitution of the Republic of Kazakhstan as constitutional shall be adopted by a two-thirds vote of the total number of deputies of the Supreme Soviet.
Article 130. Court protection of the Constitution and insurance of its superior authority shall be entrusted to the Constitutional Court of the Republic of Kazakhstan, which shall consider claims on constitutional conformity of laws and other acts, interstate contracts, and other commitments of the Republic of Kazakhstan.
Article 131. Determination by the Constitutional Court of the unconstitutionality of

the laws or other acts shall overturn their functioning in the territory of the Republic of Kazakhstan, and the Constitutional Court also shall overturn normative and other acts, based on the law, which are found to be unconstitutional. Determination of the unconstitutionality of international, contractual, and other commitments of the Republic of Kazakhstan by the Constitutional Court shall signify their invalidity before they come into force. Decisions of the Constitutional Court shall have legal force from the moment of their enactment, unless the President or the Chairman of the Supreme Soviet of the Republic of Kazakhstan should submit an objection to the Constitutional Court within ten days from the moment of enactment. When the President or the Chairman of the Supreme Soviet shall submit an objection to a resolution of the Constitutional Court, the execution of that resolution will be suspended. If the Constitutional Court by a majority of not less than a two-thirds vote out of the total number of judges confirms the previously passed resolution, it shall go into force from the moment of its enactment. Resolutions of the Constitutional Court shall be final and carry no right of appeal.

Section V. Transitional Provisions

Chapter 1. General Provisions

Article 1. Present transitional provisions shall be a constituent part of the Constitution of the Republic of Kazakhstan and shall be aimed at the proper implementation of its regulations.

Article 2. The functioning of the Constitution (the Main Law) of the Kazakh SSR of 1978 with its subsequent changes and additions, except for articles 98, 100, 104, 105, 110, 113 of the Constitution of the Kazakh SSR, which shall be valid till the term of authorities of the Supreme Soviet of the Republic of Kazakhstan of the twelfth convocation expires, shall cease on the day when the Constitution of the Republic of Kazakhstan is enacted.

Article 3. Some provisions of the Constitution of the Republic of Kazakhstan shall come into force in the sequence and within the period established in the present transitional provisions.

Chapter II. On Legislation

Article 4. Training in the state language during the transitional period, shall be free and without charge; during this period, office work procedures shall be carried on in both the Kazakh and Russian languages.

Article 5. Laws, stated in the Constitution of the Republic of Kazakhstan as constitutional, should be adopted within a year from the Constitution's enactment, except:

Constitutional laws on the Supreme Soviet of the Republic of Kazakhstan, on the status of a deputy of the Supreme Soviet of the Republic of Kazakhstan and on elections to the Supreme Soviet and to local representative bodies of the Republic of Kazakhstan, which

should be adopted not later than July 1, 1994. If the laws, stated in the Constitution of the Republic of Kazakhstan as constitutional have been adopted to the moment of enactment of the Constitution of the Republic of Kazakhstan, then they shall be changed in conformity with it and be with it and be considered constitutional.

Other laws, stated in the Constitution of the Republic of Kazakhstan, should be adopted in the order and time determined by the Supreme Soviet, but not later than two years after the Constitution's enactment. If such laws have been functioning up to the moment of the present Constitution's enactment, they shall be brought into line with its provisions.

Article 6. Laws and other normative acts, and acts of local representative bodies of the Republic, should be changed to confirm with the Constitution of the Republic of Kazakhstan within two years from its enactment. Up to this time, such laws and regulations shall function insofar as they do not contradict the present Constitution and laws of the Republic of Kazakhstan.

Article 7. Laws and other normative acts of the USSR shall be applied in the territory of the Republic of Kazakhstan till the adoption of the appropriate laws and other normative acts of the Republic and only to the extent that they do not contradict the present Constitution and laws of the Republic of Kazakhstan. International agreements of the USSR shall be applied in the territory of the Republic of Kazakhstan insofar as they do not contradict the Constitution, laws, and interstate agreements of the Republic of Kazakhstan. The functioning of the contradictory provisions of the mentioned agreements shall be stopped according to the procedure established by legislation of the Republic of Kazakhstan.

Chapter III. On the State, Its Bodies and Institutions

Article 8. Provisions of article 68 of the Constitution of the Republic of Kazakhstan shall come into force from the opening of the first session of the Supreme Soviet of the new convocation. Part two of article 115 of the present Constitution shall come into force from the opening of the first sessions of local representative bodies of the new convocation.

Article 9. The Supreme Soviet of the Republic of Kazakhstan, elected in accordance with legislation, valid at the enactment of the Constitution of the Republic of Kazakhstan, shall perform its powers till the expiration of the term for which it was elected.

Article 10. The President and Vice President, elected in accordance with legislation of the Kazakh SSR valid at the enactment of the present Constitution, shall preserve their powers till the next presidential elections. Meanwhile, the provision of the Constitution of the Republic of Kazakhstan, stating that a person cannot hold the office of the President for more than two consecutive terms shall cover the President of the Republic of Kazakhstan.

Article 11. With the enactment of the present Constitution, the Cabinet of Ministers shall preserve its powers till a new Cabinet of Ministers is formed.

Article 12. The laws regulating the composition and activity of courts, the public prosecutor's department, and law-enforcing bodies, valid at the enactment of the Constitution of the Republic of Kazakhstan, shall be applied insofar as they do not contradict its provisions.

Article 13. The present Constitution shall come into force from the moment of its being signed.

Passed on January 28, 1993, at the ninth session of the Supreme Soviet of the Republic of Kazakhstan of the twelfth convocation.

President of the Republic of Kazakhstan
N. NAZARBAEY
Alma-Ata, January 28, 1993
No. 1932-XII

Note: The original translation of the text was corrected by the editor. Articles 33, 61, 64 were missing from the original translation. After the production work on this book was completed, Kazakhstan adopted a new constitution of August 30, 1995. The English translation of the new constitution was published in 1996 in *Constitutions of the Countries of the World*, ed. Gilbert H. Flanz, trans. Milan Fryscak, by Oceana Publications.

CONSTITUTION OF THE KYRGHYZ REPUBLIC

(Adopted on May 5, 1993, at the Session of Supreme Soviet of the Kyrghyz Republic of the 12th Convocation.)

We, People of the Kyrghyz Republic,

in order to secure national revival of the Kyrghyz, the defense and development of interests of representatives of all nationalities who form together with the Kyrghyz the People of Kyrghyzstan, guided by the ancestors' precepts to live in unity, peace and concord;

to confirm our adherence to human rights and freedoms and the idea of national statehood;

full of determination to develop the economy, political and legal institutions, culture in order to ensure worthy standards of living for everybody;

announcing our adherence to universal human principles, and moral values of national traditions;

full of desire to establish ourselves among the peoples of the world as a free and democratic civil society;

in our role as authorized representatives do enact the present Constitution.

Chapter 1: The Kyrghyz Republic

Section 1. General Principles

Article 1. The Kyrghyz Republic (Kyrghyzstan) shall be a sovereign unitary democratic republic created on the basis of a legal secular state. Sovereignty of the Kyrghyz Republic shall not be limited and shall extend throughout its territory. People of the Kyrghyz Republic shall bear sovereignty and shall be the only source of the State Power in the Kyrghyz Republic. People of the Kyrghyz Republic shall exercise their power directly and through the system of state bodies on the basis of this Constitution and laws of the Kyrghyz Republic. Only the Jogorku Kenesh [parliament] and the President of the Kyrghyz Republic elected by the people of Kyrghyzstan shall have the right to act on behalf of the People of Kyrghyzstan. Laws and other issues of State life, in order to reveal the will of the People, may be put to a referendum. The basis and procedure of holding a referendum shall be established by the Constitutional Act. Citizens of the Kyrghyz Republic shall elect the President, Deputies of the Jogorku

Kenesh and their representatives to bodies of local self-government. Elections shall be free and shall be held on the basis of universal equal and direct suffrage by secret ballot. To participate in the election a citizen must have attained the age of 18.

Article 2. The State and its bodies shall serve the whole society, and not one or another particular group. No group of people, no organization, nor any person shall have the right to assume Power in the State. The usurpation of State Power shall be a felony.

Article 3. The territory of the Kyrghyz Republic within its present boundaries shall be inviolable and indivisible. The territory of the Kyrghyz Republic consists of administrative territorial units established by law for purposes of the organization of state government.

Article 4. In the Kyrghyz Republic there may be state and private property. The Kyrghyz Republic shall guarantee the diversity of property types and their equal protection by law. In the Kyrghyz Republic the land, its subsoil, water, air space, fauna and flora—all natural resources shall be the property of the State. Plots of land in the procedure and size provided by law of the Kyrghyz Republic may be given to citizens and their associations for private possession. The purchase and sale of land shall not be allowed. The Kyrghyz Republic shall defend the right of its citizens and legal entities to own property, and shall defend citizens' and governmental property located on the territories of other states.

Article 5. The official language of the Kyrghyz Republic shall be the Kyrghyz language. The Kyrghyz Republic shall guarantee preservation, equal and free development and functioning of the Russian language and all other languages which are used by the population of the republic. Infringement of the citizens' rights on the ground of absence of knowledge and command of the official language shall not be allowed.

Article 6. The state symbols of the Kyrghyz Republic are the State Flag, Emblem and Anthem. The capital of the Kyrghyz Republic is the city of Bishkek.

Section 2. The Structure and Activity of the State

Article 7. State Power in the Kyrghyz Republic shall be based on the following principles:

—the division of Power into legislative, executive and judicial branches;

—nationwide election of the head of the State—President of the Kyrghyz Republic, who shall be the guarantor of the stability of the Constitution and unity of the State;

—the division between national power and local self-government.

State power in the Kyrghyz Republic shall be vested in and exercised by:

—The Legislative Power—by the Jogorku Kenesh;

—The Executive Power—by the Government and local state administration;

—The Judicial Power—by the Constitutional Court, the Supreme Court, the Supreme Economic Court, Courts and judges of the system of justice.

Bodies of Legislative, Executive and Judicial Power shall function independently and in cooperation with each other. They shall have no right to exceed their powers established by the Constitution of the Kyrghyz Republic.

Article 8. Political parties, trade unions and other public associations may be organized

in the Kyrghyz Republic on the basis of free will and unity of interests. The State shall guarantee the rights and lawful interests of public associations. Political parties may participate in state affairs only in the following forms:

—to nominate their candidates for the election to the Jogorku Kenesh, state posts and to bodies of local self-government;

—to form factions in representative bodies.

All religious sects shall be separated from the State.

The following shall not be allowed in the Kyrghyz Republic:

—the amalgamation of State and Party institutions, as well as subordination of State activity to party programs and decisions;

—the formation of activity of party organizations in state institutions and establishments. Officials shall have the right to carry out their party activities outside their working hours;

—membership and activity in support of any political party by military men, officials in the organs of internal affairs, national security, justice procuracy and courts;

—organization of political parties on religious grounds. Religious organizations shall not pursue political aims and tasks;

—interference by members of religious organizations and sects with the activity of state bodies;

—the activity of political parties of foreign countries.

Article 9. The Kyrghyz Republic shall not pursue the policy of expansion, aggression and territorial claim to the extent performed by means of military force. It shall reject any kind of militarization of national life, subordination of the government or its activity for the purposes of war. Military forces of Kyrghyzstan shall be organized in accordance with the principles of self-defense and defensive sufficiency. The right to go to war shall not be acknowledged except in cases of aggression against Kyrghyzstan or other countries coming under the obligations to collective defense. The permission in each case when a military unit crosses over the borders of Kyrghyzstan must be received in the form of a decision of the Jogorku Kenesh approved by not less than two-thirds of the total number of Deputies. The use of military force for the solution of internal political issues shall be prohibited. Military personnel may be called upon in case of natural disasters and in other similar cases prescribed directly by law. The Kyrghyz Republic shall seek universal and just peace, mutual cooperation, solution of global and regional problems by peaceful measures, and shall observe universally recognized principles of International Law. Actions aimed at disturbing the peaceful communal life of the people, propaganda and encouragement of ethnic clashes shall be unconstitutional.

Article 10. A state of emergency of Kyrghyzstan may be imposed only in case of natural disaster, direct threat to the Constitutional structure, breach of public order accompanied by violence and menace to human life, as well as under the circumstances and for limited periods, as provided for in the Constitutional Law. A state of emergency throughout the territory of the Kyrghyz Republic may be imposed only by the Jogorku Kenesh. A state of emergency may be imposed by the President in limited locations under circumstances requiring immediate action; the President shall inform

the Jogorku Kenesh the same day. The Jogorku Kenesh shall confirm the act of the President within not more than three days. If such a confirmation has not been made within the indicated time, the state of emergency shall be annulled. Martial law in the Kyrghyz Republic may be introduced by the Jogorku Kenesh only in case of aggression against the Kyrghyz Republic. Recess of a session of the Jogorku Kenesh shall not be allowed during a state of emergency and martial law. In those cases when the Jogorku Kenesh is not in session and a state of emergency has been imposed by the President, the Jogorku Kenesh shall call a special session not later than the day following the introduction of the state of emergency. Referenda, elections to state bodies as well as any changes in the structure, functions and power of the state bodies established by the Constitution shall not be allowed during a state of emergency and martial law.

Article 11. The state budget of the Kyrghyz Republic shall consist of the republican budget and local budgets, comprising all expenditures and revenues of the state. The republican budget shall be approved by the Jogorku Kenesh upon presentation by the Government. Revenue in the republican budget shall be derived from taxes established by law, other liabilities, income from state property and other incomes. A single system of taxation shall function in the territory of the Kyrghyz Republic. The right to impose taxes shall belong to the Jogorku Kenesh of the Kyrghyz Republic. The Jogorku Kenesh shall have the right to establish extra-budgetary dedicated financial funds. The sources of income for these extra-budgetary funds may be attracted assets. The report on the execution of the republican budget and extra-budgetary funds shall be approved by the Jogorku Kenesh.

Article 12. The Constitution shall have supreme legal force and direct effect in the Kyrghyz Republic. Laws and other normative acts shall be adopted on the basis of the Constitution. International treaties and other norms of international law which have been ratified by the Kyrghyz Republic shall be a component and directly applicable part of legislation of the Kyrghyz Republic.

Chapter 2: Citizens

Section 1. Citizenship

Article 13. The belonging of a citizen to the Kyrghyz Republic and his status shall be determined by citizenship. A citizen of the Kyrghyz Republic shall observe the Constitution and laws of the republic, and shall respect the rights, freedoms, honor and dignity of other people. Citizenship of other countries shall not be recognized for citizens of the Kyrghyz Republic. No citizen of the Kyrghyz Republic shall be deprived of his citizenship or the right to change his citizenship. The Kyrghyz Republic shall guarantee defense and protection of its citizens when outside its territory.

Article 14. Every citizen of the Kyrghyz Republic by virtue of his citizenship shall enjoy the rights and perform obligations. Foreign citizens and stateless persons when

in Kyrghyzstan shall enjoy the rights and freedoms of citizens and perform duties on the bases, under the terms and in the procedure prescribed by law, international treaties and agreements.

Section 2. The Rights and Freedoms of the Individual

Article 15. Dignity of an individual in the Kyrghyz Republic shall be absolute and inviolable. The basic human rights and freedoms shall belong to every person from birth. They shall be recognized as absolute, inalienable and protected by law and the courts from infringement by any other person. All persons in the Kyrghyz Republic are equal before law and the court. No person shall be subject to any kind of discrimination, violation of his rights and freedoms on the ground of ethnic origin, sex, race, nationality, language, religion, political and religious convictions, as well as under other conditions and circumstances of private or social nature. Human rights and freedoms are valid in the Kyrghyz Republic. Such rights shall determine the meaning, content and application of the laws; shall be respected by the legislative and executive branches and local self-government, and shall be guaranteed by the judicial system. In the Kyrghyz Republic, the State shall encourage folk customs and traditions which do not contravene the Constitution and human rights and freedoms.

Article 16. In the Kyrghyz Republic the basic human rights and freedoms shall be recognized and guaranteed in accordance with universally accepted norms and principles of international law, international treaties and agreements on the issues of human rights which have been ratified by the Kyrghyz Republic. Every person in the Kyrghyz Republic shall enjoy the right:

—to life, physical and moral immunity;

—to personal freedom and security;

—to freedom of personal development;

—to freedom of conscience, spirit and worship;

—to free expression and dissemination of one's thoughts, ideas, opinions, and freedom of literary, artistic, scientific and technical creative work, freedom of the press, and transmission and dissemination of information;

—to freedom of movement and freedom to choose one's place of residence throughout the territory of Kyrghyzstan, and the right to travel abroad and return home;

—to freedom of assembly;

—to associate peacefully without weapons, to hold meetings and demonstrations;

—to the inviolability of the home;

—to freedom and privacy of correspondence;

—to dignity, freedom of private life, personal and family secrecy;

—to secrecy of post, telephone and telegraphic communications;

—to have property, to possess, use and administer it on one's own account;

—to economic freedom, free use of ones abilities and property for any type of economic activity;

—to freedom of labor, and free choice of one's type of activity and occupation.

The enumeration of rights and freedoms in the Constitution shall not be interpreted as negating or infringing upon other universally recognized human rights and freedoms.

Article 17. In the Kyrghyz Republic no laws shall be enacted which abolish or infringe on human rights and freedoms. Restrictions on the exercise of rights and freedoms shall be allowed by the Constitution and laws of the Kyrghyz Republic only for the purposes of guaranteeing rights and freedoms of other persons, providing public safety and constitutional order. In such cases, the essence of the constitutional rights and freedoms shall not be effected.

Article 18. Limitations of physical and moral inviolability shall be allowed only on the basis of law by the decision of a court as punishment for a crime committed. No one may be tortured, subjected to ill-treatment or inhuman degrading punishment. Medical, biological, and physiological experiments on people shall be prohibited without a voluntary agreement properly expressed and confirmed by the person participating in the experiment. No one may be subjected to arrest or detention except on the basis of law. Any actions aimed at imposing responsibility for a crime on a person before the sentence has been passed by the court shall not be allowed, and shall be grounds for material and moral compensation to the victim by the court. Capital punishment may be imposed only in exceptional cases under the sentence of a court. Any person sentenced to capital punishment shall have the right to appeal for pardon.

Article 19. Private property in the Kyrghyz Republic shall be recognized and guaranteed as an inalienable human right, as a natural source of one's welfare, business and creative activity, and as a guarantor of one's economic and personal independence. Property shall be inviolable. No person can be deprived of his property, and its deprivation against the will of its owner shall be allowed only by the decision of a court. In the Kyrghyz Republic the right of inheritance shall be guaranteed and protected by law.

Article 20. The Kyrghyz Republic may grant political asylum to foreign citizens and stateless persons in response to human rights violations.

Section 3. The Rights and Duties of a Citizen

Article 21. Citizens of the Kyrghyz Republic, and their organizations, shall be allowed to engage in any action or activity, except those prohibited or restricted by the present Constitution and laws of the Kyrghyz Republic. The enjoyment of the rights and freedoms by a citizen of the Kyrghyz Republic shall be inseparable from his duties as are necessary for the security of private and national interest.

Article 22. Laws of the Kyrghyz Republic concerning the rights and freedoms of citizens shall be equally applied to all citizens and shall not bestow on anyone privileges and preferences, except those provided by the Constitution and laws for the social protection of citizens.

Article 23. Citizens of the Kyrghyz Republic shall participate in governing both directly and through their representatives, in the discussion and adoption of laws, deci-

sions of republican and local significance, and they shall have equal access to governmental services.

Article 24. Citizens of the Kyrghyz Republic shall have the right and duty to defend the Motherland. Citizens shall perform military service within the limits and in the forms established by law.

Article 25. Citizens of the Kyrghyz Republic are obliged to pay taxes and fees in accordance with legislation.

Article 26. The Family shall be the fundamental unit of society; family, fatherhood, maternity and childhood shall be the subject of concern for the whole society and subject to preferable protection by law; child care and upbringing shall be the natural right and civic duty of the parents. Children are obliged to render help to their parents. The government shall provide material assistance, upbringing and education for orphans and children deprived of parental support. Respect for old people and support for relatives shall be a sacred tradition of the People of Kyrghyzstan.

Article 27. In the Kyrghyz Republic social maintenance at the expense of the government shall be guaranteed in old age, in sickness and in the event of complete or partial disability or loss of the breadwinner. Pensions and social maintenance in accordance with economic resources of the society shall provide a standard of living not below the minimum wage established by law. Voluntary social insurance and the establishment of additional forms of security and charity shall be encouraged.

Article 28. Citizens of the Kyrghyz Republic shall have the right to protection of labor in all its forms and ways, including the right to working conditions which comply with norms of security and hygiene, as well as the right to social protection against unemployment. The government shall provide for professional training and improvement of professional skills of citizens, and shall encourage and promote international agreements and international organizations which have the aim of consolidating and securing the right to work. The forced labor of citizens shall be prohibited, except in cases of war, natural disaster, epidemic, or in other extraordinary circumstances, as well as in the execution of punishment upon sentence of the court.

Article 29. Citizens of the Kyrghyz Republic working under labor agreement (contract) shall have the right to fair remuneration not below the minimum wage established by the government.

Article 30. Citizens of the Kyrghyz Republic have the right to strike. The procedure and conditions for holding strikes shall be prescribed by law.

Article 31. Citizens of the Kyrghyz Republic shall have the right to rest. The maximum duration of the working hours, the minimum weekly rest and annual paid leave as well as other terms of exercise of the right to rest shall be prescribed by law.

Article 32. Every citizen of the Kyrghyz Republic shall have the right to education. General secondary education shall be compulsory and free of charge. Every citizen shall have the right to get a free education at national educational institutions. The State shall provide for every person in accordance with individual aptitude accessibility to vocational, special secondary and higher education. Paid education for citizens at

national and other educational institutions shall be allowed on the basis and in the procedure established by legislation. The State shall exercise control over the activity of educational institutions.

Article 33. Citizens of the Kyrghyz Republic shall have the right to housing. The State promotes the fulfillment of the right to housing by giving and selling state-owned housing, and the encouragement of individual house-building.

Article 34. Citizens of the Kyrghyz Republic shall enjoy the right to protection of health, to benefit freely from the network of state public health institutions. Paid medical service shall be allowed on the basis and in the procedure established by law.

Article 35. Citizens of the Kyrghyz Republic shall have the right to a healthy, safe environment and to compensation for the damage caused to one's health and property by activity in the sphere of nature usage. The protection of the environment, natural resources and historical monuments shall be the sacred duty of every citizen.

Article 36. Culture, art, literature, science and the mass media shall be free. The State shall protect historical monuments, care for and provide the necessary conditions for the development of literature, art, science, the mass media and sports. Citizens shall have the right to enjoy cultural benefits, to study art and science.

Article 37. Social activity of the State shall not be substituted by state care limiting economic freedom and activity, or the opportunity of a citizen to achieve economic welfare for himself and his family.

Article 38. It is the duty of the State and all its bodies and officials to provide for full, absolute and immediate protection of the rights and freedoms of citizens, to prevent the infringement of rights in this sphere and to restore violated provisions. The Kyrghyz Republic shall guarantee judicial defense of all the rights and freedoms of citizens established by the Constitution and laws.

Article 39. A citizen charged with an offense shall be presumed innocent until found guilty by sentence of the court. The State shall guarantee everyone defense from arbitrary and unlawful interference with one's private and family life, infringement of one's honor and dignity, or breach of secrecy of correspondence and telephone conversations. No one shall have the right to enter a dwelling except in cases when it is necessary to conduct a sanctioned search or seizure of public order, to arrest a criminal, or to save the life, health or property of a person.

Article 40. Every citizen in the Kyrghyz Republic shall be guaranteed effective legal assistance and defense of the rights and freedoms provided for by the Constitution.

Article 41. The publication of laws and other normative legal acts concerning the rights, freedoms and duties of an individual and a citizen shall be a compulsory condition for their application.

Chapter III: The President

Article 42. The President of the Kyrghyz Republic shall be the head of the State and shall represent the Kyrghyz Republic inside the country and in foreign relations. The President of the Kyrghyz Republic shall secure the unity of the State and the stability

of the Constitutional order; he shall act in the capacity of the guarantor of the Constitution and laws, the rights and freedoms of citizens of the Kyrghyz Republic and shall provide for the coordinated functioning and interaction of national bodies.

Section 1. The Election of the President

Article 43. The President of the Kyrghyz Republic shall be elected for a term of five years. The same person shall not be elected President for more than two terms running. A citizen of the Kyrghyz Republic may be elected President of the Kyrghyz Republic if he is not younger than 35 years of age and is not older than 65 years of age, who has command of the official language and has been a resident of the Republic for not less than 15 years before the nomination of his candidacy to the office of President. The President of the Kyrghyz Republic shall not be a Deputy of the Jogorku Kenesh, shall not hold other posts and engage in free enterprise activity. The President of the Kyrghyz Republic shall suspend his activity in political parties and organizations during the term of office until the beginning of a new election for President of the Kyrghyz Republic.

Article 44. A new election for the office of President of the Kyrghyz Republic shall be held two months before the date on which the Powers of the President of the Kyrghyz Republic expire. The President of the Kyrghyz Republic shall be elected by citizens of the Kyrghyz Republic by a majority of actual votes cast; elections shall be held on the basis of universal, equal and direct suffrage by secret ballot. The number of candidates for the office of President of the Kyrghyz Republic shall not be limited. Any person who has registered and has obtained not fewer than 50,000 voter signatures may be a candidate for President of the Kyrghyz Republic. The election of the President shall be considered valid if more than 50 percent of all voters in the republic have participated in the election.

In the first ballot, a candidate shall be considered elected to the office of President if he has obtained more than half of those votes cast in the election. If none of the candidates obtains more than half of the votes cast in the first ballot, only the two candidates who have obtained the largest number of votes shall appear on the second ballot. A candidate who obtains more than half of the votes cast in the second ballot shall be considered elected if not less than 50 percent of all voters have taken part in the second ballot.

Article 45. The results of the election for President of the Kyrghyz Republic shall be confirmed by the Constitutional Court of the Kyrghyz Republic not later than seven days after the date of the election. After the chairman of the Supreme Court of the Kyrghyz Republic announces the results of voting, the President shall take the oath of office within 30 days. Upon entry into office, the President of the Kyrghyz Republic shall take an oath before the people of Kyrghyzstan:

"I, . . . , taking on the obligations of President of the Kyrghyz Republic, before my People and the sacred Motherland of Ala-Too do swear: To observe and protect the Constitution and laws of the Kyrghyz Republic; to guard the Sovereignty and independence of the Kyrghyz State; to respect and guarantee the rights and freedoms of all

citizens of the Kyrghyz Republic; to perform faithfully the high duties of the President of the Kyrghyz Republic entrusted to me by the confidence of all the People!" The term of the Presidential mandate shall become effective from the moment of taking the oath of office. The Powers of the President shall terminate upon the moment a newly elected President enters office.

Section 2. The Powers of the President

Article 46. The President of the Kyrghyz Republic shall:

(1) determine the structure of the Government of the Kyrghyz Republic and submit it for confirmation by the Jogorku Kenesh;

(2) appoint the Prime Minister of the Kyrghyz Republic with the consent of the Jogorku Kenesh;

(3) appoint members of the Government upon presentation by the Prime Minister and with the consent of the Jogorku Kenesh;

(4) relieve members of the Government and heads of administrative departments of the Kyrghyz Republic;

(5) accept the resignation of the Government; on his own initiative with the consent of the Jogorku Kenesh shall make a decision on withdrawal of the Powers of the Government before the date the Powers of the Government expire.

The President of the Kyrghyz Republic shall:

(1) appoint with the consent of the Jogorku Kenesh the Procurator-General of the Kyrghyz Republic;

(2) appoint with the consent of the Jogorku Kenesh the Chairman of the board of the National Bank of the Jogorku Republic;

(3) appoint upon presentation by the Prime Minister, and with the consent of the local Keneshs, the heads of state administrations of oblasts and the city of Bishkek;

(4) approve Heads of regional, city, and state administrations nominated by the Prime Minister with the consent of local Keneshs upon presentation by the Heads of state administrations of regions and the city of Bishkek;

(5) present to the Jogorku Kenesh the candidates for the office of Chairman of the Constitutional Court of the Kyrghyz Republic and seven judges of the Constitutional Court of the Kyrghyz Republic;

(6) present to the Jogorku Kenesh the candidates for the offices of Chairman of the Supreme Court, the Supreme Economic Court of the Kyrghyz Republic, Deputy Chairmen and judges of the Supreme Court and the Supreme Economic Court of the Kyrghyz Republic;

(7) appoint with the consent of the Jogorku Kenesh Chairmen, deputy Chairmen and judges of regional courts, the court of the city of Bishkek, district and city courts, regional economic courts, as well as military tribunals of the Kyrghyz Republic and remove them from office in the events prescribed by the Constitution and laws;

(8) appoint with the consent of the Jogorku Kenesh Heads of diplomatic missions of the Kyrghyz Republic in foreign countries and international organizations;

(9) receive the Letters of Credence and Recall of diplomatic missions of foreign countries and representatives of international organizations accredited to him;

(10) confer high military ranks, diplomatic ranks, class ranks and other special titles.

The President of the Kyrghyz Republic shall:

(1) decide the matters concerning granting and withdrawing citizenship of the Kyrghyz Republic and granting pardon;

(2) award orders and medals as well as other state awards of the Kyrghyz Republic; award honorary ranks and state bonuses of the Kyrghyz Republic.

The President of the Kyrghyz Republic shall:

(1) on his own initiative submit bills to the Jogorku Kenesh;

(2) sign within a two-week term laws after their adoption by the Jogorku Kenesh or refer them to the Jogorku Kenesh with his remarks for a second consideration. If the Jogorku Kenesh confirms the previously taken decision by a majority of two-thirds from the total number of Deputies, the President of the Kyrghyz Republic shall sign the law; if the President does not express his attitude to the law within a two-week term and does not demand its second consideration, he shall be obliged to sign that law:

(3) address the People with an annual report on the situation in the Republic announced in the Jogorku Kenesh;

(4) conduct international negotiations and sign international treaties of the Kyrghyz Republic; submit them for ratification to the Jogorku Kenesh;

(5) have the right to protest to the Constitutional Court of the Kyrghyz Republic against a law adopted by the Jogorku Kenesh or an international treaty ratified by the Jogorku Kenesh;

(6) abolish or suspend the effect of acts of Government of the Kyrghyz Republic, Ministries, state committees and administrative departments of the Kyrghyz Republic, Heads of local state administration in case they contravene the Constitution and Laws of the Kyrghyz Republic.

The President of the Kyrghyz Republic shall have the right to:

(1) contravene an extraordinary session of the Uluk Kenesh [Supreme Soviet];

(2) submit issues of state life to a public referendum;

(3) dissolve the Jogorku Kenesh before the date on which its Powers expire in accordance with the results of a public referendum and set up the date of a new election to the Jogorku Kenesh.

The President of the Kyrghyz Republic shall notify the Kenesh of a possibility of introduction of a state of emergency with the existence of grounds envisaged by law and in case of necessity shall impose it in separate localities without preliminary announcement and immediately notify the Jogorku Kenesh. The President of the Kyrghyz Republic shall declare universal or partial mobilization, declare a state of war in case of military aggression against the Kyrghyz Republic and shall immediately submit this issue to consideration by the Jogorku Kenesh; he shall proclaim martial law in the interests of defense of the country and security for the consideration of the Jogorku Kenesh.

Article 47. The President of the Kyrghyz Republic shall be the Commander-in-Chief of the Armed Forces, he shall appoint and replace the Commander-in-Chief of the Armed Forces of the Kyrghyz Republic.

Article 48. The President of the Kyrghyz Republic shall issue within his Powers on the basis and for the implementation of the Constitution of the Kyrghyz Republic decrees binding upon the whole territory of the country. The President of the Kyrghyz Republic shall issue resolutions and instructions on separate matters related to his competence.

Article 49. The President of the Kyrghyz Republic may delegate the execution of his Powers envisaged in subpoint 9 of point 2 and in subpoint 4 of point 4 of Article 46 to the Toroga of the Jogorku Kenesh.

Article 50. The President of the Kyrghyz Republic shall enjoy the right of integrity and immunity.

Article 51. The Powers of the President may be stopped as a result of his retirement by a resignation sent to the Jogorku Kenesh, inability to discharge his Powers in the event of a disease, in case of his death as well as in the event of removal from office in the events envisaged in the present Constitution. In case the President of the Kyrghyz Republic is unable to discharge his Powers on the account of a disease, the Jogorku Kenesh shall on the basis of the conclusion of an independent medical commission decide on the removal of the President of the Kyrghyz Republic before the date on which the Powers of the President expire; a majority of not less than two-thirds of votes from the total number of Deputies of the Jogorku Kenesh shall be required to remove the President.

Article 52. The President of the Kyrghyz Republic can be removed from his office for state treason and other crimes only by a majority of the Jogorku Kenesh, with no less than two-thirds of the whole number of deputies present, on the basis of a resolution of the Constitutional Court of the Kyrghyz Republic.

Article 53. 1. In case of the inability of the President of the Kyrghyz Republic to exercise his Powers for any reason, they shall be delegated to the Toroga [chairman] of the Jogorku Kenesh pending the election of a new President. In case the Toroga of the Jogorku Kenesh is unable to discharge the powers of the President, they shall be delegated to the Prime Minister. 2. The election of a new President of the Kyrghyz Republic in this case shall be held within three months.

Chapter IV: The Jogorku Kenesh

Section 1. The Election of the Jogorku Kenesh

Article 54. The Jogorku Kenesh of the Kyrghyz Republic shall be the highest-standing representative body. The legislative power and functions of control shall be vested in the Jogorku Kenesh. The Jogorku Kenesh shall consist of 105 Deputies who shall be elected for a term of five years. The procedure for election of the Deputies shall be determined by the Constitutional act.

Article 55. Deputies of the Jogorku Kenesh shall be elected from electoral districts on the basis of universal, equal and direct suffrage by secret ballot. A voter from every electoral shall have one vote. Voters shall take part in the election directly and on equal grounds.

Article 56. A citizen of the Kyrghyz Republic may be elected Deputy of the Jogorku Kenesh if he has attained the age of 25 and permanently resides in the Republic for not fewer than 5 years. A Deputy of the Jogorku Kenesh shall be a representative of the People of Kyrghyzstan, shall be subordinate to the Constitution of the Kyrghyz Republic and his conscience. A Deputy of the Jogorku Kenesh shall have the right to integrity and immunity. He may not be persecuted for his statements expressed in accordance with his activity of a Deputy and for the results of his voting in the Jogorku Kenesh. A Deputy shall not be detained or arrested, subject to search or individual examination except when he is caught in the act. Provisional commissions of the Jogorku Kenesh shall examine the validity of measures taken by the competent bodies and if these measures have not been taken by a court, the Jogorku Kenesh shall invalidate them. A Deputy may be prosecuted for criminal or administrative activity only with the consent of the Jogorku Kenesh. A Deputy of the Jogorku Kenesh shall have no right to hold any posts in state service, judicial bodies, engage in business activity. A Deputy of the Jogorku Kenesh may be deprived of his mandate only in case of his resignation, commitment of a crime, disability confirmed not otherwise than by a motivated resolution of the Jogorku Kenesh.

Article 57. A Deputy of the Jogorku Kenesh shall have the right to address inquiries to bodies and officials of state administrations, who are obliged to respond to the inquiry at the session of the Jogorku Kenesh.

Section 2. The Powers of the Jogorku Kenesh

Article 58. The following powers shall be vested in the Uluk Kenesh:

(1) to amend and change the Constitution of the Kyrghyz Republic in accordance with the procedure established by the Constitution;

(2) to adopt laws of the Kyrghyz Republic; to amend laws and to exercise control over their fulfillment;

(3) to make official interpretation of the adopted normative acts;

(4) to determine the guidelines of home and foreign policy;

(5) to approve the republican Budget of the Kyrghyz Republic and the report on its execution;

(6) to determine the monetary system of the Kyrghyz Republic;

(7) to change the boundaries of the Kyrghyz Republic;

(8) to decide matters concerning the administrative territorial structure of the Kyrghyz Republic;

(9) to set up the date of election for President of the Kyrghyz Republic;

(10) to organize the Central Commission on elections and referenda;

(11) upon presentation by the President of the Kyrghyz Republic to elect the Chairman

of the Constitutional Court of the Kyrghyz Republic, Deputy Chairman, and seven judges of the Constitutional Court of the Kyrghyz Republic;

(12) upon presentation by the President of the Kyrghyz Republic to elect the chairman of the Supreme Court, the Chairman of the Supreme Economic Court of the Kyrghyz Republic, Deputy Chairmen and judges of the Supreme Court and the Supreme Economic Court of the Kyrghyz Republic;

(13) to determine the structure of the Government of the Kyrghyz Republic;

(14) to give consent to the appointment of the Prime Minister of the Kyrghyz Republic and the composition of the Government of the Kyrghyz Republic, the Procurator-General of the Kyrghyz Republic and the Chairman of the Board of the National Bank;

(15) to give consent to the appointment of heads of diplomatic missions of the Kyrghyz Republic to foreign countries and international organizations;

(16) to give consent to the dissolution of the Government before the date on which the Powers of the government expire;

(17) upon presentation by the Toroga of the Jogorku Kenesh to appoint the Chairman and Deputy Chairman of the Supervisory Chamber of the Jogorku Kenesh.

(18) to ratify and denounce international treaties; to decide issues of war and peace;

(19) to institute military ranks, diplomatic ranks, class ranks and other special titles of the Kyrghyz Republic;

(20) to establish state awards and honorary titles of the Kyrghyz Republic;

(21) to issue acts on amnesty;

(22) to impose a state of emergency or to confirm and abolish the act of the President of the Kyrghyz Republic on this issue; the resolution of the Jogorku Kenesh approving the decision of the President to impose a state of emergency shall be adopted by a majority of not less than two-thirds from the total number of Deputies of the Jogorku Kenesh;

(23) to proclaim martial law, announce a state of war and to issue a resolution concerning their declaration by the President of the Kyrghyz Republic;

(24) to decide on the use of the contingent Armed Forces of the republic when it is necessary to support peace and security in accordance with intergovernmental treaty obligations;

(25) to hear reports of the bodies formed or elected by it as well as reports of officials appointed or elected by it; in cases when it is necessary, to decide the question of confidence to the Government of the republic or its individual member by a majority of two-thirds from the total number of Deputies by secret ballot;

(26) to submit the matters of state life to a referendum;

(27) to decide the matter concerning the removal of officials in the events specified in Article 52 and point I of Article 81 of the present Constitution.

Article 59. The Jogorku Kenesh shall elect the Toroga and Deputy Toroga from among the Deputies, from committees, Supervisory Chamber and provisional commissions. The Toroga of the Jogorku Kenesh shall be elected by secret ballot. He shall be accountable to the Jogorku Kenesh and may be relieved from his office by the decision of the Jogorku Kenesh taken by a majority of not less than two-thirds of the total number of the Deputies. The Toroga of the Jogorku Kenesh shall preside at the sessions of the

Jogorku Kenesh, exercise general control over the preparation of the matters liable to consideration at the sessions of the Jogorku Kenesh and its Presidium and shall be responsible for their internal order, sign resolutions and decisions adopted by the Jogorku Kenesh and its Presidium and shall exercise other powers vested in it by the Constitution and laws of the Kyrghyz Republic. Deputy Torogas of the Jogorku Kenesh shall be elected by secret ballot; they shall carry out the commission of the Toroga, his separate functions and act as Toroga in case of his absence or inability to discharge his Powers.

Article 60. The Toroga, Deputy Torogas, and Chairmen of committees shall form the Presidium of the Jogorku Kenesh. The Presidium of the Jogorku Kenesh shall be accountable to the Jogorku Kenesh and shall provide the organization of its activity. The Presidium shall prepare the sittings of the Jogorku Kenesh, coordinate the activity of committees and provisional committees, organize nationwide discussions of draft laws of the Kyrghyz Republic and other important issues of state life. The Presidium shall publish texts of laws of the Kyrghyz Republic and other acts adopted by the Jogorku Kenesh.

Article 61. Committees and provisional communities of the Jogorku Kenesh shall conduct law-drafting works, preliminary consideration of questions referred to the competence of the Jogorku Kenesh, supervise the implementation of adopted laws and decisions.

Article 62. The Procedure of activity of the Jogorku Kenesh shall be determined by rules.

Article 63. The Jogorku Kenesh may be dissolved before the date on which its Powers expire by the decision taken by not less than two-thirds of the total number of Deputies or as the results of a nationwide referendum.

Section 3. The Legislative Activity of the Jogorku Kenesh

Article 64. The right to initiate laws shall be vested in Deputies of the Jogorku Kenesh, the President of the Kyrghyz Republic, the Government of the Kyrghyz Republic, the Supreme Court of the Kyrghyz Republic, the Supreme Economic Court of the Kyrghyz Republic and the people's initiative—30,000 of electors.

Article 65. A bill submitted to the Jogorku Kenesh shall be discussed in the committees after which the bill shall be referred to the President who shall send it for consideration to the Jogorku Kenesh.

Article 66. The bill shall be considered passed if it has been voted for by a majority of the total number of Deputies of the Jogorku Kenesh. In case of amending or changing the Constitution of the Kyrghyz Republic, adoption of the constitutional acts and amending them, not less than two-thirds of the votes from the total number of the Deputies of the Jogorku Kenesh shall be required. Amending the Constitution and constitutional acts shall be prohibited during a state of emergency and martial law.

Article 67. A law shall become effective from the moment of its publication, if not indicated otherwise in the law itself or in the resolution of the Jogorku Kenesh on the procedure of its implementation.

Article 68. A referendum shall be held by the proposal of not fewer than 300,000 of electors or one-third of the total number of Deputies of the Jogorku Kenesh.

Chapter V: Executive Power

Article 69. The Executive Power in the Kyrghyz Republic shall be vested in the Government of the Kyrghyz Republic, accountable to its ministries, state committees, administrative departments, local state administration.

Section 1. The Government

Article 70. The Government of the Kyrghyz Republic shall be the highest executive body of State Power in the Kyrghyz Republic. The activity of the Government of the Kyrghyz Republic shall be headed by the Prime Minister of the Kyrghyz Republic. The Government of the Kyrghyz Republic shall consist of the Prime Minister of the Kyrghyz Republic, Vice Prime Ministers, Ministers and Chairmen of state committees of the Kyrghyz Republic. The structure of the government shall be determined by the President of the Kyrghyz Republic upon presentation of the Prime Minister and shall be approved by the Jogorku Kenesh.

Article 71. The Prime Minister of the Kyrghyz Republic shall:

—present to the President the candidates for the office of members of the Government;

—form and abolish administrative departments of the Kyrghyz Republic;

—appoint Heads of administrative departments;

—present to the President the candidates for the office of heads of regional state administrations upon presentation by Heads of state administrations of regions and the city of Bishkek and remove them from office.

The decisions by the Prime Minister concerning appointment and removal shall become effective after they have been approved by the President of the Kyrghyz Republic.

Article 72. The President of the Kyrghyz Republic shall exercise control over the work of the Government of the Kyrghyz Republic. The President shall have the right to preside at the sitting of the Government. The annual report on the work of the Government shall be submitted to the Jogorku Kenesh by the Prime Minister. The Jogorku Kenesh shall have the right to demand the report from the Government or its individual member.

Article 73. The Government of the Kyrghyz Republic shall decide all matters of state governing except of administrative and supervisory authorities vested in the President of the Kyrghyz Republic, and the Jogorku Kenesh by the Constitution. Government of the Kyrghyz Republic shall:

—prepare the republican Budget, submit it to the Jogorku Kenesh and provide its implementation;

—pursue budgetary, financial, tax and price policy;

—organize and manage state property;

—take measures on the defense of the country, state security, and implementation of foreign policy of the Kyrghyz Republic;

—take measures to provide the rule of law, the rights and freedoms, of citizens, protection of property and public order, fight with criminality.

The Government of the Kyrghyz Republic and the National Bank of Kyrghyzstan shall provide for a sole monetary, credit and currency policy.

Article 74. The Government of the Kyrghyz Republic shall issue decrees and ordinances binding throughout the territory of the Kyrghyz Republic for all bodies, organizations, officials and citizens and organize, supervise and secure their fulfillment.

Article 75. The Government of the Kyrghyz Republic shall guide the activity of ministries, state committees, administrative departments and bodies of local state administration. Ministries, state committees and administrative departments shall issue within their competence decrees and ordinances on the basis and for the implementation of the Constitution, laws of the Kyrghyz Republic, resolutions of the Jogorku Kenesh, acts of the President, organize, verify and secure their implementation. The government shall hear reports of the Heads of local state administration, invalidate the acts of heads of local state administration which contravene the legislation, with further notice to the President.

Article 76. The Procuracy of the Kyrghyz Republic shall within its competence supervise the precise and universal observation of legislative acts. The bodies of the Procuracy shall exercise criminal pursuit, participate in judicial proceedings in cases and in the procedure prescribed by law.

Section 2. Local State Administration

Article 77. The executive powers in regions, districts and towns shall be vested in local state administration as directed by the Heads of the local state administration. The executive power in ails [villages] and settlements shall be vested in the chairmen of the corresponding Keneshs of the ails and settlements.

Article 78. The heads of local state administration and the chairmen of the Keneshs of the ails and settlements shall act under the guidance of the Government. Decisions reached by the heads of local state administration or by the chairmen of the Keneshs of ails and settlements within their competence shall be binding throughout the corresponding territory.

Chapter VI: Courts and Justice

Article 79. Justice in the Kyrghyz Republic shall be administered only by the courts. In the Kyrghyz Republic there shall be the following courts: "The Constitutional Court of the Kyrghyz Republic, the Supreme Court of the Kyrghyz Republic, the Supreme Economic Court of the Kyrghyz Republic and local courts (regional courts, courts of the city of Bishkek, district and municipal courts, regional economic courts, military tribunals as well as courts of elders and courts of Arbitration)." The creation and

establishment of extraordinary or special courts and judicial positions shall not be allowed. The status of courts and judges in the Kyrghyz Republic shall be specified by the constitutional laws. The organization of and procedure for court operation shall be specified by law. A judge shall be subordinate only to the Constitution and the Law. A judge shall enjoy the right to integrity and immunity and in accordance with his status shall be provided with social, material and other guarantees of his independence.

Article 80. A citizen of the Kyrghyz Republic may serve as a judge on the Constitutional Court, Supreme Court and Supreme Economic Court of the Kyrghyz Republic if he is not younger than 35 years of age and not older than 70 years of age, who has higher legal education and not less than 10 years of experience in the legal profession. Judges of the Constitutional Court of the Kyrghyz Republic shall be elected for a term of fifteen years by the Jogorku Kenesh upon presentation by the President of the Kyrghyz Republic. Judges of the Supreme Court and Supreme Economic Court of the Kyrghyz Republic shall be elected for a term of ten years by the Jogorku Kenesh upon presentation by the President of the Kyrghyz Republic.

A citizen of the Kyrghyz Republic may serve as a judge on a local court if he is not older than 65 years, has higher legal education and not fewer than 5 years of experience in the legal profession. Judges of local courts shall be appointed by the President of the Kyrghyz Republic with the consent of the Jogorku Kenesh; the first term shall be for 3 years, and subsequent terms shall be for 7 years.

Article 81. Judges of the Constitutional Court, the Supreme Court and the Supreme Economic Court of the Kyrghyz Republic may be removed from office for treason and other offenses by the Jogorku Kenesh on the basis of the judgment of the Constitutional Court of the Kyrghyz Republic; the majority of not less than two-thirds of the votes of the total number of Deputies shall be required to remove a judge from office. Judges of local courts may be removed from office on the basis of their health, at their personal request, according to the results of examinations, for the violation of law or dishonorable conduct incompatible with their high position as well as on the basis of a binding court judgment. A judge of a local court may be prosecuted for criminal activity with the consent of the Constitutional Court of the Kyrghyz Republic.

Article 82. The Constitutional Court shall be the highest body of judicial power for the protection of judicial power for the protection of the Constitution of the Kyrghyz Republic. The Constitutional Court shall consist of the Chairman, the Deputy Chairman and seven judges of the Constitutional Court. The Constitutional Court shall:

(1) declare laws and other normative legal acts unconstitutional in the event that they contravene the Constitution;

(2) decide disputes concerning the effect, application and interpretation of the Constitution;

(3) determine the validity of the elections for President of the Kyrghyz Republic;

(4) issue a judgment concerning the removal from office of the President of the Kyrghyz Republic as well as judges of the Constitutional Court, the Supreme Court and the High Court of Arbitrage of the Kyrghyz Republic;

(5) give its consent for the criminal prosecution of judges of local courts;

(6) issue a judgment concerning amendments and changes to the Constitution of the Kyrghyz Republic;

(7) annul the decision of bodies of local self-government which contravene the Constitution of the Kyrghyz Republic;

(8) render decisions concerning the constitutionality of practice on the application of laws which affect the constitutional rights of citizens.

A decision of the Constitutional Court shall be final and no appeal will be heard. If the Constitutional Court declares laws or other acts unconstitutional, such laws or acts shall no longer be in effect on the territory of the Kyrghyz Republic; such a finding shall also annul normative and others which are based on the act declared unconstitutional.

Article 83. The Supreme Court of the Kyrghyz Republic shall be the highest body of judicial power in the sphere of civil, criminal and administrative court action. The Supreme Court of the Kyrghyz Republic shall supervise the operation of the court of the city of Bishkek, regional and municipal courts and military tribunals of the Kyrghyz Republic.

Article 84. The Supreme Economic Court of the Kyrghyz Republic and regional economic courts shall form a single system of economic courts of the Kyrghyz Republic. Economic Courts shall decide economic disputes between objects of economy based on different forms of property. The Supreme Economic Court of the Kyrghyz Republic shall supervise the operation of the regional economic courts of the Kyrghyz Republic.

Article 85. Courts of elders and courts of arbitration may be established on the territory of ails, settlements, and cities by the decision of citizens' meetings from among elder people and other citizens held in respect and authority. Courts of elders and courts of arbitration shall consider property, family disputes and other cases envisaged by law referred to them by the arguing parties with the purpose of conciliation and passing just decisions which do not contravene the law. The decision of courts of elders and courts of arbitration may be appealed to the corresponding regional and municipal courts of the Kyrghyz Republic.

Article 86. The decision of courts of the Kyrghyz Republic which have come into force shall be binding upon all state bodies, economic objects, public organizations, officials and citizens on the territory of the republic. Nonexecution of court decisions which came into force as well as interference with the activity of courts shall lead to responsibility established by Law.

Article 87. A court shall have no right to adopt normative acts which contravene the Constitution of the Kyrghyz Republic. If in the process of consideration of a case in any judicial instance there arises a doubt on the constitutionality of a law or any other act on which the decision of the case depends, the court shall send an inquiry to the Constitutional Court of the Kyrghyz Republic.

Article 88. A citizen shall have the right to defense of his dignity and rights in trial in case of any public or any other accusation; under no circumstances shall he be denied such court defense. The defense shall be an inalienable right of a person at any stage of

consideration of a case. Citizens without financial means shall be given legal assistance and defense at the expense of the Government. Every participant of a trial shall have the right to be heard.

Article 89. The burden of proving guilt on criminal and administrative cases is on the procurator. Evidence received by way of violation of law shall not be acknowledged; reference to such evidence in trial shall not be allowed.

Article 90. Principles of justice established by the Constitution shall be universal and single for all courts and judges in the Kyrghyz Republic.

Chapter VII: Local Self-Government

Article 91. Matters of life of the population of ails, towns, districts, regions which are of local significance shall be decided on the basis of local self-government functioning along with the State Power.

Article 92. Local self-government in ails, settlements, districts and regions shall be exercised by local Keneshs, elected by the population of the corresponding territorial units.

Article 93. Laws of the Kyrghyz Republic shall establish the fundamentals of the organization and functioning of local self-government as well as regulate between local self-government and bodies of local state administration.

Article 94. Chairmen of ail and settlement Keneshs shall be heads of local self-government and bodies of local state administration.

Article 95. Local Keneshs shall:

—approve and exercise control over the programs of social and economic development on the territory and social protection of the population;

—approve the local budget and report on its implementation as well as hear information on the use of extrabudgetary funds.

Local Keneshs of districts, towns, regions shall have the right to take a vote of no-confidence to the Head of local state administration of the corresponding territorial unit. Local Keneshs shall operate irrespective of local state administration. Local Keneshs within their powers shall adopt acts binding throughout their territory.

Chapter VIII: The Procedure for Amendments and Additions to the Constitution of the Kyrghyz Republic

Article 96. Amendments and additions to the present Constitution shall be adopted by the Jogorku Kenesh upon presentation by the President of the Kyrghyz Republic by the majority of not less than one-third of the Deputies of the Jogorku Kenesh of the Kyrghyz Republic or not fewer than 300,000 citizens of the Kyrghyz Republic. Proposals concerning amending and changing the Constitution of the Kyrghyz Republic shall be considered by the Jogorku Kenesh of the Kyrghyz Republic on receipt of the judgment of the Constitutional Court of the Kyrghyz Republic not earlier than in three months and not later than in six months from the date of their registration. The

wording of amendments and additions to the Constitution of the Kyrghyz Republic may not be changed in the course of their discussion by the Jogorku Kenesh.

Article 97. Amendments and additions to the Constitution of the Kyrghyz Republic shall be deemed adopted if they have received two-thirds of the votes of the total number of Deputies of the Jogorku Kenesh. The proposal which has not been passed may be submitted for a second consideration not earlier than in a year.

THE LITHUANIAN NATION

(Adopted October 25, 1992)

—having established the State of Lithuania many centuries ago,
—having based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania,
—having for centuries defended its freedom and independence,
—having preserved its spirit, native language, writing, and customs,
—embodying the inborn right of each person and the People to live and create freely in the land of their fathers and forefathers—in the independent State of Lithuania,
—fostering national concord in the land of Lithuania,
—striving for an open, just, and harmonious civil society and law-governed State, by the will of the citizens of the reborn State of Lithuania, approves and declares this

CONSTITUTION

Chapter 1: The State of Lithuania

Article 1. The State of Lithuania shall be an independent and democratic republic.
Article 2. The State of Lithuania shall be created by the People. Sovereignty shall be vested in the People.
Article 3. No one may limit or restrict the sovereignty of the People or make claims to the sovereign powers of the People. The People and each citizen shall have the right to oppose anyone who encroaches on the independence, territorial integrity, or constitutional order of the State of Lithuania by force.
Article 4. The People shall exercise the supreme sovereign power vested in them either directly or through their democratically elected representatives.
Article 5. In Lithuania, the powers of the State shall be exercised by the Seimas, the President of the Republic and Government, and the Judiciary. The scope of powers shall be defined by the Constitution. Institutions of power shall serve the people.
Article 6. The Constitution shall be an integral and directly applicable statute. Every person may defend his or her rights on the basis of the Constitution.
Article 7. Any law or other statute which contradicts the Constitution shall be invalid.

Only laws which are promulgated shall be valid. Ignorance of the law shall not exempt a person from responsibility.

Article 8. The forced seizure of State power or any of its institutions shall be considered an anticonstitutional action, which is illegal and invalid.

Article 9. The most significant issues concerning the life of the State and the People shall be decided by referendum. In the cases established by law, referendums shall be announced by the Seimas. Referendums shall also be announced if no fewer than 300,000 of the electorate so request. The procedure for the announcement and execution of a referendum shall be established by law.

Article 10. The territory of the State of Lithuania shall be integral and shall not be divided into any state derivatives. The State borders may be realigned only by an international treaty of the Republic of Lithuania which has been ratified by four-fifths of all the Seimas members.

Article 11. The administrative divisions of the territory of the State of Lithuania and their boundaries shall be determined by law.

Article 12. Citizenship of the Republic of Lithuania shall be acquired by birth or on other bases established by law. With the exception of cases established by law, no person may be a citizen of the Republic of Lithuania and another state at the same time. The procedure for the acquisition and loss of citizenship of the Republic of Lithuania shall be established by law.

Article 13. The State of Lithuania shall protect its citizens abroad. It shall be prohibited from extraditing a citizen of the Republic of Lithuania to another state unless an international agreement whereto the Republic of Lithuania is a party establishes otherwise.

Article 14. Lithuanian shall be the State language.

Article 15. The colors of the State flag shall be yellow, green, and red. The State emblem shall be a white Vytis [knight on horseback, meaning pursuit] on a red background. The State flag and emblem and their use shall be established by law.

Article 16. The national anthem shall be Vincas Kudirka's "Tautiska Giesme."

Article 17. The capital of the Republic of Lithuania shall be the city of Vilnius, the long-standing historical capital of Lithuania.

Chapter 2: The Individual and the State

Article 18. The rights and freedoms of individuals shall be inborn.

Article 19. The right to life of individuals shall be protected by law.

Article 20. Personal freedom shall be inviolable. No person may be arbitrarily arrested or detained. No person may be deprived of freedom except on the bases, and according to the procedures, which have been established in laws. A person detained in flagrante delicto must, within 48 hours, be brought to court for the purpose of determining, in the presence of the detainee, the validity of the detention. In the event that the court does not pass a decision to arrest the person, the detained individual shall be released immediately.

Article 21. The person shall be inviolable. Human dignity shall be protected by law. It shall be prohibited to torture, injure, degrade, or maltreat a person, as well as to establish such punishments. No person may be subjected to scientific or medical testing without his or her knowledge thereof and consent thereto.

Article 22. The private life of an individual shall be inviolable. Personal correspondence, telephone conversations, telegraph messages, and other intercommunications shall be inviolable. Information concerning the private life of an individual may be collected only upon a justified court order and in accordance with the law. The law and the court shall protect individuals from arbitrary or unlawful interference in their private or family life, and from encroachment upon their honor and dignity.

Article 23. Property shall be inviolable. The rights of ownership shall be protected by law. Property may be seized only for the needs of society according to the procedure established by law and must be adequately compensated for.

Article 24. A person's dwelling place shall be inviolable. Without the consent of the resident(s), entrance into a dwelling place shall be permitted only upon a corresponding court order, or according to the procedure established by law when the objective of such an action is to protect public order, apprehend a criminal, or save a person's life, health, or property.

Article 25. Individuals shall have the right to have their own convictions and freely express them. Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas. Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honor and dignity, private life, or morals of a person, or for the protection of constitutional order. Freedom to express convictions or impart information shall be incompatible with criminal actions—the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation. Citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law.

Article 26. Freedom of thought, conscience, and religion shall not be restricted. Every person shall have the right to freely choose any religion or faith and, either individually or with others, in public or in private, to manifest his or her religion or faith in worship, observance, practice or teaching. No person may coerce another person or be subject to coercion to adopt or profess any religion or faith. A person's freedom to profess and propagate his or her religion or faith may be subject only to those limitations prescribed by law and only when such restrictions are necessary to protect the safety of society, public order, a person's health or morals, or the fundamental rights and freedoms of others. Parents and legal guardians shall have the liberty to ensure the religious and moral education of their children in conformity with their own convictions.

Article 27. A person's convictions, professed religion or faith may justify neither the commission of a crime nor the violation of law.

Article 28. While exercising their rights and freedoms, persons must observe the Con-

stitution and the laws of the Republic of Lithuania, and must not impair the rights and interests of other people.

Article 29. All people shall be equal before the law, the court, and other State institutions and officers. A person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions.

Article 30. Any person whose constitutional rights or freedoms are violated shall have the right to appeal to the court. The law shall establish the procedure for compensating material and moral damage inflicted on a person.

Article 31. Every person shall be presumed innocent until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence. Every indicted person shall have the right to a fair and public hearing by an independent and impartial court. Persons cannot be compelled to give evidence against themselves or against their family members or close relatives. Punishments may be administered or applied only on the basis of law. No person may be punished for the same offense twice. From the moment of arrest or first interrogation, persons suspected or accused of a crime shall be guaranteed the right to defense and legal counsel.

Article 32. Citizens may move and choose their place of residence in Lithuania freely, and may leave Lithuania at their own will. This right may not be restricted except as provided by law and if it is necessary for the protection of State security or the health of the people, or to administer justice. A citizen may not be prohibited from returning to Lithuania. Every Lithuanian person may settle in Lithuania.

Article 33. Citizens shall have the right to participate in the government of their State both directly and through their freely elected representatives, and shall have the equal opportunity to serve in a State office of the Republic of Lithuania. Each citizen shall be guaranteed the right to criticize the work of State institutions and their officers, and to appeal against their decisions. It shall be prohibited to persecute people for criticism. Citizens shall be guaranteed the right to petition; the procedure for implementing this right shall be established by law.

Article 34. Citizens who, on the day of election, are 18 years of age or over, shall have the right to vote in the election. The right to be elected shall be established by the Constitution of the Republic of Lithuania and by the election laws. Citizens who are declared legally incapable by a court shall not participate in elections.

Article 35. Citizens shall be guaranteed the right to freely form societies, political parties, and associations, provided that the aims and activities thereof do not contradict the Constitution and laws. No person may be forced to belong to any society, political party, or association. The founding and functioning of political parties and other political and public organization shall be regulated by law.

Article 36. Citizens may not be prohibited or hindered from assembling in unarmed peaceful meetings. This right may not be subjected to any restrictions except those which are provided by law and are necessary to protect the security of the State or the

community, public order, people's health or morals, or the rights and freedoms of other persons.

Article 37. Citizens who belong to ethnic communities shall have the right to foster their language, culture, and customs.

Chapter 3: Society and the State

Article 38. The family shall be the basis of society and the State. Family, motherhood, fatherhood, and childhood shall be under the care and protection of the State. Marriage shall be entered into upon the free consent of man and woman. The State shall register marriages, births, and deaths. The State shall also recognize marriages registered in church. In the family, spouses shall have equal rights. The right and duty of parents is to bring up their children to be honest individuals and loyal citizens, as well as to support them until they come of age. The duty of children is to respect their parents, to care for them in old age, and to preserve their heritage.

Article 39. The State shall take care of families bringing up children at home, and shall render them support in the manner established by law. The law shall provide for paid maternity leave before and after childbirth, as well as for favorable working conditions and other privileges. Children who are under age shall be protected by law.

Article 40. State and local government establishments of teaching and education shall be secular. At the request of parents, they shall offer classes in religious instruction. Nongovernmental teaching and educational institutions may be established according to the procedure established by law. Institutions of higher learning shall be granted autonomy. The State shall supervise the activities of establishments of teaching and education.

Article 41. Education shall be compulsory for persons under the age of 16. Education at State and local government secondary, vocational, and higher schools shall be free of charge. Everyone shall have an equal opportunity to attain higher education according to their individual abilities. Citizens who demonstrate suitable academic progress shall be guaranteed education at establishments of higher education free of charge.

Article 42. Culture, science, research and teaching shall be unrestricted. The State shall support culture and science, and shall be concerned with the protection of Lithuanian history, art, and other cultural monuments and valuables. The law shall protect and defend the spiritual and material interests of authors which are related to scientific, technical, cultural, and artistic work.

Article 43. The State shall recognize traditional Lithuanian churches and religious organizations, as well as other churches and religious organizations provided that they have a basis in society and their teaching and rituals do not contradict morality or the law. Churches and religious organizations recognized by the State shall have the rights of legal persons. Churches and religious organizations shall freely proclaim the teaching of their faith, perform the rituals of their belief, and have houses of prayer, charity institutions, and educational institutions for the training of priests of their faith. Churches and religious organizations shall function freely according to their canons

and statutes. The status of churches and other religious organizations in the State shall be established by agreement or by law. The teachings proclaimed by churches and other religious organizations, other religious activities, and houses of prayer may not be used for purposes which contradict the Constitution and the law. There shall not be a State religion in Lithuania.

Article 44. Censorship of mass media shall be prohibited. The State, political parties, political and public organizations, and other institutions or persons may not monopolize means of mass media.

Article 45. Ethnic communities of citizens shall independently administer the affairs of their ethnic culture, education, organizations, charity, and mutual assistance. The State shall support ethnic communities.

Chapter 4: National Economy and Labor

Article 46. Lithuania's economy shall be based on the right to private ownership, freedom of individual economic activity, and initiative. The State shall support economic efforts and initiative which are useful to the community. The State shall regulate economic activity so that it serves the general welfare of the people. The law shall prohibit monopolization of production and the market, and shall protect freedom of fair competition. The State shall defend the interests of the consumers.

Article 47. Land, internal waters, forests, and parks may belong only to the citizens and the State of the Republic of Lithuania by the right of ownership. Plots of land may belong to a foreign state by the right of ownership for the establishment of its diplomatic and consular missions in accordance with the procedure and conditions established by law. The right of ownership of the extractive minerals of the earth, as well as nationally significant internal waters, forests, parks, roads, and historical, archaeological and cultural facilities shall exclusively belong to the Republic of Lithuania. The Republic of Lithuania shall have the exclusive ownership right to the airspace over its territory, its continental shelf, and the economic zone in the Baltic Sea.

Article 48. Every person may freely choose an occupation or business, and shall have the right to adequate, safe and healthy working conditions, adequate compensation for work, and social security in the event of unemployment. The employment of foreigners in the Republic of Lithuania shall be regulated by law. Forced labor shall be prohibited. Military service or alternative service, as well as labor which is executed during war, natural calamity, epidemic, or other urgent circumstances, shall not be deemed as forced labor. Labor which is performed by convicts in places of confinement and which is regulated by law shall not be deemed as forced labor either.

Article 49. Every person shall have the right to rest and leisure, as well as to annual paid holidays. Working hours shall be established by law.

Article 50. Trade unions shall be freely established and shall function independently. They shall defend the professional, economic, and social rights and interests of employees. All trade unions shall have equal rights.

Article 51. Employees shall have the right to strike in order to protect their economic

and social interests. The restrictions of this right, and the conditions and procedures for the implementation thereof shall be established by law.

Article 52. The State shall guarantee the right of citizens to old age and disability pensions, as well as to social assistance in the event of unemployment, sickness, widowhood, loss of breadwinner, and other cases provided by law.

Article 53. The State shall take care of people's health and shall guarantee medical aid and services in the event of sickness. The procedure for providing medical aid to citizens free of charge at State medical facilities shall be established by law. The State shall promote physical culture of the society and shall support sports. The State and each individual must protect the environment from harmful influences.

Article 54. The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilization of natural resources as well as their restoration and augmentation. The exhaustion of land and extractive minerals of the earth, the pollution of waters and air, the production of radioactive wastes, as well as the impoverishment of fauna and flora, shall be prohibited by law.

Chapter 5: The Seimas

Article 55. The Seimas [parliament] shall consist of representatives of the People. One hundred forty-one Seimas members shall be elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot. The Seimas shall be deemed elected when at least three-fifths of the Seimas members have been elected. The electoral procedure shall be established by law.

Article 56. Any citizen of the Republic of Lithuania who is not bound by an oath or pledge to a foreign state, and who, on the election day, is 25 years of age or over and has permanently been residing in Lithuania, may be elected a Seimas member. Persons who have not served their court-imposed sentence, as well as persons declared legally incapable by court, may not be elected members of the Seimas.

Article 57. Regular elections to the Seimas shall be held no earlier than 2 months, and no later than 1 month, prior to the expiration of the powers of the Seimas members.

Article 58. Pre-term elections to the Seimas may be held on the decision of the Seimas adopted by three-fifths majority vote of all the Seimas members. The President of the Republic of Lithuania may also announce pre-term elections to the Seimas:

(1) if the Seimas fails to adopt a decision on the new program of the Government within 30 days of its presentation, or if the Seimas twice in succession disapproves of the Government program within 60 days of its initial presentation; or

(2) on the proposal of the Government, if the Seimas expresses direct nonconfidence in the Government.

The President of the Republic may not announce pre-term elections to the Seimas if the term of office of the President of the Republic expires within less than six months, or if six months have not passed since the pre-term elections to the Seimas. The day of elections of the new Seimas shall be specified in the resolution of the Seimas or in the

decree of the President of the Republic concerning the pre-term elections to the Seimas. The election to the new Seimas must be organized within three months from the adoption of the decision on the pre-term elections.

Article 59. The term of office of Seimas members shall commence from the day that the newly elected Seimas convenes for the first sitting. The powers of the previously elected Seimas members shall expire as from the opening of the sitting. Newly elected Seimas members shall acquire all the rights of a People's representative only after taking an oath in the Seimas to be loyal to the Republic of Lithuania. Seimas members who either do not take an oath in the manner prescribed by law, or who take a conditional oath, shall lose the mandate of a Seimas member. The Seimas shall adopt a corresponding resolution thereon. In office, Seimas members shall act in accordance with the Constitution of the Republic of Lithuania, the interests of the State, as well as their own consciences, and may not be restricted by any mandates.

Article 60. The duties of Seimas members, with the exception of their duties in the Seimas, shall be incompatible with any other duties in State institutions or organizations, as well as with work in trade, commercial and other private institutions or enterprises. For the term of office, Seimas members shall be exempt from the duty to perform national defense service. A Seimas member may be appointed only as Prime Minister or Minister. The service of a Seimas member shall be remunerated, and all expenses incurred from parliamentary activities shall be reimbursed with funds from the State budget. A Seimas member may not receive any other salary, with the exception of payment for creative activities. The duties, rights and guarantees of the activities of Seimas members shall be established by law.

Article 61. Seimas members shall have the right to submit inquiries to the Prime Minister, the individual Ministers, and the heads of other State institutions formed or elected by the Seimas. Said persons or bodies must respond orally or in writing at the Seimas session in the manner established by the Seimas. At sessions of the Seimas, a group of no less than one-fifth of the Seimas members may interpellate the Prime Minister or a Minister. Upon considering the response of the Prime Minister or Minister to the interpellation, the Seimas may decide that the response is not satisfactory, and, by a majority vote of half of all the Seimas members, express nonconfidence in the Prime Minister or a Minister. The voting procedure shall be established by law.

Article 62. The person of a Seimas member shall be inviolable. Seimas members may not be found criminally responsible, may not be arrested, and may not be subjected to any other restriction of personal freedom without the consent of the Seimas. Seimas members may not be persecuted for voting or speeches in the Seimas. However, legal actions may be instituted against Seimas members according to the general procedure if they are guilty of personal insult or slander.

Article 63. The powers of a Seimas member shall be terminated:

(1) on the expiration of the term of his or her powers, or when the Seimas, elected in pre-term elections, convenes for the first sitting;

(2) upon his or her death;

(3) upon his or her resignation;

(4) when he or she is declared legally incapable by the court;

(5) when the Seimas revokes his or her mandate in accordance with impeachment proceedings;

(6) when the election is recognized as invalid, or if the law on election is grossly violated;

(7) if he or she takes up, or does not resign from, employment which is incompatible with the duties of a Seimas member; and

(8) if he or she loses citizenship of the Republic of Lithuania.

Article 64. Every year, the Seimas shall convene for two regular sessions—one in spring and one in fall. The spring session shall commence on March 10th and shall end on June 30th. The fall session shall commence on September 10th and shall end on December 23rd. The Seimas may resolve to prolong a session. Extraordinary sessions shall be convened by the Seimas Chairperson upon the proposal of at least one-third of all the Seimas members, and, in cases provided for in the Constitution, by the President of the Republic.

Article 65. The President of the Republic shall convene the first sitting of the newly elected Seimas which must be held within 15 days of the Seimas election. If the President of the Republic fails to convene the sitting of the Seimas, the members of the Seimas shall assemble the day following the expiration of the 15-day period.

Article 66. The Chairperson or Assistant Chairperson of the Seimas shall preside over sittings of the Seimas. The sitting directly following elections of the Seimas shall be opened by the eldest member of the Seimas.

Article 67. The Seimas shall:

(1) consider and enact amendments to the Constitution;

(2) enact laws;

(3) adopt resolutions for the organization of referendums;

(4) announce presidential elections of the Republic of Lithuania;

(5) form State institutions provided by law, and shall appoint and dismiss their chief officers;

(6) approve or reject the candidature of the Prime Minister proposed by the President of the Republic;

(7) consider the program of the Government submitted by the Prime Minister, and decide whether to approve it or not;

(8) upon the recommendation of the Government, establish or abolish ministries of the Republic of Lithuania;

(9) supervise the activities of the Government, and may express nonconfidence in the Prime Minister or individual Ministers;

(10) appoint judges to, and Chairpersons of, the Constitutional Court and the Supreme Court;

(11) appoint to, and dismiss from, office the State Controller as well as the Chairperson of the Board of the Bank of Lithuania;

(12) announce local government Council elections;

(13) form the Central Electoral Committee and change its composition;

(14) approve the State budget and supervise the implementation thereof;
(15) establish State taxes and other obligatory payments;
(16) ratify or denounce international treaties whereto the Republic of Lithuania is a party, and consider other issues of foreign policy;
(17) establish administrative divisions of the Republic;
(18) establish State awards of the Republic of Lithuania;
(19) issue acts of amnesty; and
(20) impose direct administration and martial law, declare states of emergency, announce mobilization, and adopt decisions to use the armed forces.

Article 68. The right of legislative initiative in the Seimas shall belong to the members of the Seimas, the President of the Republic, and the Government. Citizens of the Republic of Lithuania shall also have the right of legislative initiative. A draft law may be submitted to the Seimas by 50,000 citizens of the Republic of Lithuania who have the right to vote. The Seimas must consider this draft law.

Article 69. Laws shall be enacted in the Seimas in accordance with the procedure established by law. Laws shall be deemed adopted if the majority of the Seimas members participating in the sitting vote in favor thereof. Constitutional laws of the Republic of Lithuania shall be deemed adopted if more than half of all the members of the Seimas vote in the affirmative. Constitutional laws shall be amended by at least a three-fifths majority vote of all the Seimas members. The Seimas shall establish a list of constitutional laws by a three-fifths majority vote of the Seimas members. Provisions of the laws of the Republic of Lithuania may also be adopted by referendum.

Article 70. The laws enacted by the Seimas shall be enforced after the signing and official promulgation thereof by the President of the Republic, unless the laws themselves establish a later enforcement date. Other acts adopted by the Seimas and the Statute of the Seimas shall be signed by the Chairperson of the Seimas. Said acts shall become effective the day following the promulgation thereof, unless the acts themselves provide for another procedure of enforcement.

Article 71. Within ten days of receiving a law passed by the Seimas, the President of the Republic shall either sign and officially promulgate said law, or shall refer it back to the Seimas together with relevant reasons for reconsideration. In the event that the law enacted by the Seimas is not referred back or signed by the President of the Republic within the established period, the law shall become effective upon the signing and official promulgation thereof by the Chairperson of the Seimas. The President of the Republic must, within five days, sign and officially promulgate laws and other acts adopted by referendum. In the event that the President of the Republic does not sign and promulgate such laws within the established period, said laws shall become effective upon being signed and officially promulgated by the Chairperson of the Seimas.

Article 72. The Seimas may reconsider and enact laws which have been referred back by the President of the Republic. After reconsideration by the Seimas, a law shall be deemed enacted if the amendments and supplements submitted by the President of the Republic were adopted, or if more than half of all the Seimas members vote in the

affirmative, and if it is a constitutional law—if at least three-fifths of all the Seimas members vote in the affirmative. The President of the Republic must, within three days, sign and forthwith officially promulgate laws reenacted by the Seimas.

Article 73. Seimas controllers shall examine complaints of citizens concerning the abuse of powers by, and bureaucracy of, State and local government officers (with the exception of judges). Controllers shall have the right to submit proposals to the court to dismiss guilty officers from their posts. The powers of the Seimas controllers shall be established by law. As necessary, the Seimas shall also establish other institutions of control. The system and powers of said institutions shall be established by law.

Article 74. For gross violation of the Constitution, breach of oath, or upon the disclosure of the commitment of a felony, the Seimas may, by three-fifths majority vote of all the Seimas members, remove from office the President of the Republic, the Chairperson and judges of the Constitutional Court, the Chairperson and judges of the Supreme Court, the Chairperson and judges of the Court of Appeals, as well as Seimas members, or may revoke their mandate of Seimas member. Such actions shall be carried out in accordance with impeachment proceedings which shall be established by the Statute of the Seimas.

Article 75. Officers appointed or chosen by the Seimas (with the exception of persons specified in Article 74) shall be removed from office when the Seimas, by majority vote of all the members, expresses nonconfidence in the officer in question.

Article 76. The structure and procedure of activities of the Seimas shall be determined by the Statute of the Seimas. The Statute of the Seimas shall have the power of law.

Chapter 6: The President of the Republic

Article 77. The President of the Republic is the head of State. The President shall represent the State of Lithuania and shall perform all the duties which he or she is charged with by the Constitution and laws.

Article 78. Any person who is a citizen of the Republic of Lithuania by birth, who has lived in Lithuania for at least the past three years, who has reached the age of 40 prior to the election day, and who is eligible for election to Seimas membership may be elected President of the Republic. The President of the Republic shall be elected by the citizens of the Republic of Lithuania on the basis of universal, equal, and direct suffrage by secret ballot for a term of five years. The same person may not be elected President of the Republic of Lithuania for more than two consecutive terms.

Article 79. Any citizen who meets the requirements set forth in the first sentence of Article 78 and has collected the signatures of at least 20,000 voters shall be registered as a presidential candidate. The number of presidential candidates shall not be limited.

Article 80. Regular presidential elections shall be held on the last Sunday two months before the expiration of the term of office of the President of the Republic.

Article 81. The candidate for the post of President of the Republic who, during the first election round in which at least a half of the voters participate, receives the votes of more than half of all the voters who voted in the election, shall be deemed the elected

candidate. If less than half of the registered voters participate in the election, the candidate who receives the greatest number of votes, but no less than one-third of the votes of all the voters, shall be deemed the elected candidate. If, during the first election round, no single candidate gets the requisite number of votes, a repeat election shall be organized after two weeks between the two candidates who received the greatest number of votes. The candidate who receives more votes thereafter shall be deemed elected. If no more than two candidates take part in the first election round, and not one of them receives the requisite number of votes, a repeat election shall be held.

Article 82. The elected President of the Republic shall begin his duties on the day following the expiration of the term of office of the President of the Republic after taking an oath in Vilnius in the presence of the representatives of the People and members of the Seimas to be loyal to the Republic of Lithuania and the Constitution, to conscientiously fulfill the duties of President, and to be equally just to all. The President of the Republic, upon being reelected, shall take the oath as well. The act of oath of the President of the Republic shall be signed by the President and by the Chairperson of the Constitutional Court, or, in the absence of the Chairperson, by a judge of the Constitutional Court.

Article 83. The President of the Republic may not be a member of the Seimas or hold any other office, and may not receive any remuneration other than the salary established for the President as well as compensation for creative activities. A person elected President of the Republic must suspend his or her activities in political parties and political organizations until a new presidential election campaign begins.

Article 84. The President of the Republic shall:

(1) settle basic foreign policy issues and, together with the Government, implement foreign policy;

(2) sign international treaties of the Republic of Lithuania and submit them to the Seimas for ratification;

(3) appoint or recall, upon the recommendation of the Government, diplomatic representatives of the Republic of Lithuania in foreign states and international organizations; receive letters of credence and recall of diplomatic representatives of foreign states; confer highest diplomatic ranks and special titles;

(4) appoint, upon approval of the Seimas, the Prime Minister, charge him or her to form the Government, and approve its composition;

(5) remove, upon approval of the Seimas, the Prime Minister from office;

(6) accept the powers returned by the Government upon the election of a new Seimas, and charge it to continue exercising its functions until a new Government is formed;

(7) accept resignations of the Government and, as necessary, charge it to continue exercising its functions or charge one of the Ministers to exercise the functions of the Prime Minister until a new Government is formed; accept resignations of individual Ministers and commission them to continue in office until a new Minister is appointed;

(8) submit to the Seimas, upon the resignation of the Government or after it returns its powers and no later than within 15 days, the candidature of a new Prime Minister for consideration;

(9) appoint or dismiss, individual Ministers upon the recommendation of the Prime Minister;

(10) appoint or dismiss, according to the established procedure, state officers provided by law;

(11) propose Supreme Court judge candidates to the Seimas, and, upon the appointment of all the Supreme Court judges, recommend from among them a Supreme Court Chairperson to the Seimas; appoint, with the approval of the Seimas, Court of Appeal judges, and from among them—the Court of Appeal Chairperson; appoint judges and chairpersons of district and local district courts, and change their places of office; in cases provided by law, propose the dismissal of judges to the Seimas;

(12) propose to the Seimas the candidatures of three Constitutional Court judges, and, upon appointing all the judges of the Constitutional Court, propose to the Seimas from among them a candidate for Constitutional Court Chairperson;

(13) propose to the Seimas candidates for State Controller and Chairperson of the Board of the Bank of Lithuania; if necessary, propose to the Seimas to express nonconfidence in said officials;

(14) appoint or dismiss, upon the approval of the Seimas, the chief commander of the Army and the head of the Security Service;

(15) confer highest military ranks;

(16) adopt, in the event of an armed attack which threatens State sovereignty or territorial integrity, decisions concerning defense against such armed aggression, the imposition of martial law, and mobilization, and submit these decisions to the next sitting of the Seimas for approval;

(17) declare states of emergency according to the procedures and situations established by law, and submit these decisions to the next sitting of the Seimas for approval;

(18) make annual reports in the Seimas about the situation in Lithuania and the domestic and foreign policies of the Republic of Lithuania;

(19) call, in cases provided in the Constitution, extraordinary sessions of the Seimas;

(20) announce regular elections to the Seimas, and, in cases set forth in sentence 2 of Article 58 of the Constitution, announce pre-term elections to the Seimas;

(21) grant citizenship of the Republic of Lithuania according to the procedure established by law;

(22) confer State awards;

(23) grant pardons to sentenced persons; and

(24) sign and promulgate laws enacted by the Seimas or refer them back to the Seimas according to the procedure provided for in Article 71 of the Constitution.

Article 85. The President of the Republic, implementing the powers vested in him or her, shall issue acts-decrees. Decrees of the President, specified in items 3, 15, 17, and 21 of Article 84 of the Constitution, shall be valid only if they bear the signature of the Prime Minister or an appropriate Minister. Responsibility for such decrees shall lie with the Prime Minister or the Minister who signed it.

Article 86. The person of the President of the Republic shall be inviolable: while in office, the President may neither be arrested nor charged with criminal or administra-

tive proceedings. The President of the Republic may be prematurely removed from office only for gross violation of the Constitution, breach of the oath of office, or conviction of an offense. The Seimas shall resolve issues concerning the dismissal of the President of the Republic from office according to impeachment proceedings.

Article 87. When, in cases specified in sentence 2 of Article 58 of the Constitution, the President of the Republic announces pre-term elections to the Seimas, the newly elected Seimas may, by three-fifths majority vote of all the Seimas members and within 30 days of the first sitting, announce a pre-term election of the President of the Republic. If the President of the Republic wishes to compete in the election, he or she shall immediately be registered as a candidate. If the President of the Republic is reelected in such an election, he or she shall be deemed elected for a second term, provided that more than three years of the first term had expired prior to the election. If the expired period of the first term is less than three years, the President of the Republic shall only be elected for the remainder of the first term, which shall not be considered a second term. If a pre-term election for the President of the Republic is announced during the President's second term, the current President of the Republic may only be elected for the remainder of the second term.

Article 88. The powers of the President of the Republic shall be terminated:

(1) upon the expiration of the term of office;

(2) upon holding a pre-term presidential election;

(3) upon resignation from office;

(4) upon the death of the President of the Republic;

(5) when the Seimas removes the President from office according to impeachment proceedings; and

(6) when the Seimas, taking into consideration the conclusion of the Constitutional Court and by three-fifths majority vote of all the Seimas members, adopts a resolution stating that the President of the Republic is unable to fulfill the duties of office for reasons of health.

Article 89. In the event that the President dies or is removed from office according to impeachment proceedings, or if the Seimas resolves that the President of the Republic is unable to fulfill the duties of office for reasons of health, the duties of President shall temporarily be passed over to the Seimas Chairperson. In such a case, the Chairperson of the Seimas shall lose his or her powers in the Seimas, and at the behest of the Seimas, the duties of Chairperson shall temporarily be carried out by the Assistant Chairperson. In said cases, the Seimas shall announce, within 10 days, an election for the President of the Republic which must be held within two months. If the Seimas cannot convene and announce the election for the President of the Republic, the election shall be announced by the Government. The Chairperson of the Seimas shall act for the President of the Republic when the President is temporarily absent beyond the boundaries of the country or has fallen ill and by reason thereof is temporarily unable to fulfill the duties of office. While temporarily acting for the President of the Republic, the Chairperson of the Seimas may neither announce pre-term elections of the Seimas nor dismiss or appoint Ministers without the agreement of the Seimas. During the said

period, the Seimas may not consider the issue of lack of confidence in the Chairperson of the Seimas. The powers of the President of the Republic may not be executed in any other cases, or by any other persons or institutions.

Article 90. The President of the Republic shall have residence. The financing of the President of the Republic and the President's residence shall be established by law.

Chapter 7: The Government of the Republic of Lithuania

Article 91. The Government of the Republic of Lithuania shall consist of the Prime Minister and Ministers.

Article 92. The Prime Minister shall, with the approval of the Seimas, be appointed or dismissed by the President of the Republic. The Ministers shall be appointed by the President of the Republic on the nomination of the Prime Minister. The Prime Minister, within 15 days of being appointed, shall present the Government which he or she has formed and which has been approved by the President of the Republic to the Seimas and shall submit the program of its activities to the Seimas for consideration. The Government shall return its powers to the President of the Republic after the Seimas elections or upon electing the President of the Republic. A new Government shall be empowered to act after the Seimas approves its program by majority vote of the Seimas members participating in the sitting.

Article 93. On entering upon their duties, the Prime Minister and the individual Ministers shall, in the Seimas, take an oath to be loyal to the Republic of Lithuania and to observe the Constitution and laws. The text of the oath shall be established by the Law on the Government.

Article 94. The Government of the Republic of Lithuania shall:

(1) administer the affairs of the country, protect the inviolability of the territory of the Republic of Lithuania, and ensure State security and public order;

(2) implement laws and resolutions of the Seimas concerning the implementation of laws, as well as the decrees of the President;

(3) coordinate the activities of the ministries and other governmental institutions;

(4) prepare the draft budget of the State and submit it to the Seimas; execute the State Budget and report on the fulfillment of the budget to the Seimas;

(5) draft bills and submit them to the Seimas for consideration;

(6) establish diplomatic relations and maintain relations with foreign countries and international organizations; and

(7) discharge other duties prescribed to the Government by the Constitution and other laws.

Article 95. The Government of the Republic of Lithuania shall resolve the affairs of State administration at its sittings by issuing directives which must be passed by a majority vote of all members of the Government. The State Controller may also participate in the sittings of the Government. Government directives shall be signed by the Prime Minister and the appropriate Minister.

Article 96. The Government of the Republic of Lithuania shall be jointly responsible to the Seimas for the general activities of the Government. The Ministers, in directing the spheres of administration entrusted to them, shall be responsible to the Seimas, the President of the Republic, and directly subordinate to the Prime Minister.

Article 97. The Prime Minister shall represent the Government of the Republic of Lithuania and shall direct its activities. In the absence of the Prime Minister, or when the Prime Minister is unable to fulfill his or her duties, the President of the Republic of Lithuania, upon the recommendation of the Prime Minister, shall charge one of the Ministers to substitute for the Prime Minister during a period not exceeding 60 days; when there is no recommendation, the President of the Republic shall charge one of the Ministers to substitute for the Prime Minister.

Article 98. Ministers shall head their respective ministries, shall resolve issues assigned to the competence of their ministries, and shall also discharge other functions prescribed by laws. A Minister may be temporarily substituted only by another member of the Government appointed by the Prime Minister.

Article 99. The Prime Minister and Ministers may not hold any other office subject to nomination or election, may not be employed in business, commercial or other private institutions or companies, and may not receive any remuneration other than the salary established for their respective Government offices and compensation for creative activities.

Article 100. The Prime Minister and Ministers may not be prosecuted, arrested or have their freedoms restricted in any other way without the preliminary consent of the Seimas, or, if the Seimas is not in session, of the President of the Republic.

Article 101. Upon the request of the Seimas, the Government or individual Ministers must give an account of their activities to the Seimas. When more than half of the Ministers are changed, the Government must be reinvested with authority by the Seimas. Otherwise, the Government must resign. The Government must also resign if:

(1) the Seimas disapproves two times in succession of the program of the newly formed Government;

(2) the majority of all the Seimas deputies express in a secret ballot vote a lack of confidence in the Government or in the Prime Minister;

(3) the Prime Minister resigns or dies; or

(4) after Seimas elections, when a new Government is formed.

A Minister must resign if more than a half of all the Seimas members express, in a secret ballot vote, a lack of confidence in him or her. The President of the Republic shall accept resignations of the Government or individual Ministers.

Chapter 8: The Constitutional Court

Article 102. The Constitutional Court shall decide whether the laws and other legal acts adopted by the Seimas are in conformity with the Constitution and legal acts adopted by the President and the Government, do not violate the Constitution or laws.

The status of the Constitutional Court and the procedure for the execution of powers thereof shall be established by the Law on the Constitutional Court of the Republic of Lithuania.

Article 103. The Constitutional Court shall consist of 9 judges appointed for an unrenewable term of 9 years. Every three years, one-third of the Constitutional Court shall be reconstituted. The Seimas shall choose 3 candidates for Constitutional Court judges from the candidates nominated by the President of the Republic of Lithuania, 3 candidates from those nominated by the Chairperson of the Seimas, and 3 candidates from those nominated by the Chairperson of the Supreme Court; the Seimas shall appoint the candidates that they choose as judges. The Seimas shall appoint the Chairperson of the Constitutional Court from among the judges thereof and on the nomination of the President of the Republic of Lithuania. Citizens of the Republic of Lithuania who have an impeccable reputation, who are trained in law, and who have served, for at least 10 years, in the legal profession or in an area of education related to his or her qualifications as a lawyer, shall be eligible for appointment as judges of the Constitutional Court.

Article 104. In fulfilling their duties, judges of the Constitutional Court shall act independently of any other State institution, person or organization, and shall observe only the Constitution of the Republic of Lithuania. Before entering office, judges of the Constitutional Court shall, in the Seimas, swear to be faithful to the Republic of Lithuania and the Constitution. The restrictions on work and political activities which are imposed on court judges shall also apply to judges of the Constitutional Court. Judges of the Constitutional Court shall have the same rights concerning the inviolability of their person as shall members of the Seimas.

Article 105. The Constitutional Court shall consider and adopt decisions concerning the conformity of laws of the Republic of Lithuania and legal acts adopted by the Seimas with the Constitution of the Republic of Lithuania. The Constitutional Court shall also consider the conformity with the Constitution of:

(1) legal acts of the President; and

(2) legal acts of the Government.

The Constitutional Court shall present conclusions concerning:

(1) the violation of election laws during presidential elections or elections to the Seimas;

(2) whether the President of the Republic of Lithuania's health is not limiting his or her capacity to continue in office;

(3) the conformity of international agreements of the Republic of Lithuania with the Constitution; and

(4) the compliance with the Constitution of concrete actions of Seimas members or other State officers against whom impeachment proceedings have been instituted.

Article 106. The Government, no less than one-fifth of the members of the Seimas, and the courts shall have the right to address the Constitutional Court concerning legal acts specified in the first part of Article 105. No less than one-fifth of the members of the Seimas and the courts shall have the right to address the Constitutional Court

concerning the conformity of acts of the President with the Constitution and the laws. No less than one-fifth of the members of the Seimas, the courts, and the President of the Republic of Lithuania shall have the right to address the Constitutional Court concerning the conformity of an act of the Government with the Constitution and the laws. Upon the proposal of the President or the decision of the Seimas to investigate the conformity of an act with the Constitution, the applicability of the act shall be suspended. The Seimas may request a conclusion from the Constitutional Court, and in cases concerning Seimas elections and international agreements, the President of the Republic of Lithuania may also request a conclusion. The Constitutional Court shall have the right to refuse to accept cases for investigation or to prepare conclusions if the appeal is not based on legal motives.

Article 107. Laws (or parts thereof) of the Republic of Lithuania or any other acts (or parts thereof) of the Seimas, acts of the President of the Republic of Lithuania, and acts (or parts thereof) of the Government may not be applied from the day of official promulgation of the decision of the Constitutional Court that the act in question (or part thereof) is inconsistent with the Constitution of the Republic of Lithuania. The decisions of the Constitutional Court on issues assigned to its jurisdiction by the Constitution shall be final and may not be appealed. On the basis of the conclusions of the Constitutional Court, the Seimas shall have a final decision on the issues set forth in sentence 3 of Article 105 of the Constitution.

Article 108. The powers of a judge of the Constitutional Court shall be terminated:

(1) on the expiration of the term of office;

(2) upon the death of the judge;

(3) upon voluntary resignation;

(4) when the judge is incapable of fulfilling his or her duties for health reasons; and

(5) upon being removed from office by the Seimas according to impeachment proceedings.

Chapter 9: The Court

Article 109. In the Republic of Lithuania, the courts shall have the exclusive right to administer justice. While administering justice, judges and courts shall be independent. While investigating cases, judges shall obey only the law. The court shall adopt decisions on behalf of the Republic of Lithuania.

Article 110. Judges may not apply laws which contradict the Constitution. In cases when there are grounds to believe that the law or other legal act applicable in a certain case contradicts the Constitution, the judge shall suspend the investigation and shall appeal to the Constitutional Court to decide whether the law or other legal act in question complies with the Constitution.

Article 111. The court system of the Republic of Lithuania shall consist of the Supreme Court, the Court of Appeal, district courts, and local courts. For the investigation of administrative, labor, family and other litigations, specialized courts may be

established pursuant to law. Courts with special powers may not be established in the Republic of Lithuania in times of peace. The formation and competence of courts shall be determined by the Law on Courts of the Republic of Lithuania.

Article 112. In Lithuania, only citizens of the Republic of Lithuania may be judges. Supreme Court judges, as well as the Chairperson of the Supreme Court, who shall be chosen from among them, shall be appointed and dismissed by the Seimas upon the recommendation of the President of the Republic of Lithuania. Judges of the Court of Appeals, as well as the Chairperson, who shall be chosen from among them, shall be appointed by the President of the Republic of Lithuania upon the approval of the Seimas. Judges and chairpersons of district courts, local courts, and other specialized courts shall be appointed, and if necessary, transferred to other places of office, by the President of the Republic of Lithuania. A special institution of judges provided by law shall submit recommendations to the President concerning the appointment of judges, as well as their promotion, transference, or dismissal from office. A person appointed as judge shall swear, according to the procedure established by law, to be faithful to the Republic of Lithuania and to administer justice only pursuant to law.

Article 113. Judges may not hold any other elected or appointed posts, and may not be employed in any business, commercial, or other private institution or company. They are also not permitted to receive any remuneration other than the salary established for judges as well as payments for educational, scientific, or creative activities. Judges may not participate in the activities of political parties and other political organizations.

Article 114. Institutions of State power and administration, members of the Seimas and other officers, political parties, public organizations, and citizens shall be prohibited from interfering with the activities of a judge or the court, and violation of this shall incur liability. Judges may not have legal actions instituted against them, nor may they be arrested or restricted of personal freedom without the consent of the Seimas, or in the period between sessions of the Seimas, of the President of the Republic of Lithuania.

Article 115. Court judges of the Republic of Lithuania shall be dismissed from office according to the procedure established by law in the following cases:

(1) at their own will;

(2) upon expiration of their powers or upon reaching pensionable age as determined by law;

(3) for reasons of health;

(4) upon appointment to another office or upon voluntary transference to another place of office;

(5) if their behavior discredits their position as judge; and

(6) when a judgment imposed on them by a court comes into force.

Article 116. If the Chairperson or judges of the Supreme Court or of the Court of Appeals grossly violate the Constitution, break their oath, or are found guilty of an offense, the Seimas may remove them from office according to impeachment proceedings.

Article 117. In all courts, the investigation of cases shall be open to the public. Closed court sittings may be held in order to protect the secrecy of a citizen's or the citizen's family's private life, or to prevent the disclosure of State, professional, or commercial secrets. In the Republic of Lithuania, court trials shall be conducted in the State language. Persons who do not speak Lithuanian shall be guaranteed the right to participate in investigation and court proceedings through an interpreter.

Article 118. Public prosecutors shall prosecute criminal cases on behalf of the State, shall carry out criminal prosecutions, and shall supervise the activities of the interrogative bodies. Pretrial interrogation shall be carried out by investigators. The procedure for the appointment of public prosecutors and judges and their status shall be established by law.

Chapter 10: Local Governments and Administration

Article 119. Administrative units provided by law on State territory shall be entitled to the right of self-government. This right shall be implemented through local government Councils. Members of local government Councils shall be elected for a two-year term on the basis of universal, equal and direct suffrage by secret ballot by the residents of their administrative unit who are citizens of the Republic of Lithuania. The procedure for the organization and activities of self-government institutions shall be established by law. Local government Councils shall form executive bodies which are accountable to them for the direct implementation of the laws of the Republic of Lithuania and the decisions of the Government and the local government Council.

Article 120. The State shall support local governments. Local governments shall act freely and independently within the limits of their competence which shall be established by the Constitution and laws.

Article 121. Local governments shall draft and approve their own budget. Local government Councils shall have the right within the established limits and according to the procedure provided by law to establish local dues, and to provide for the leverage of taxes and duties at the expense of their own budget.

Article 122. Local government Councils shall have the right to appeal to the court regarding the violation of their rights.

Article 123. In higher-level administrative units, the administration shall be organized by the Government according to the procedure established by law. Representatives shall be appointed by the Government to ensure that the Constitution and the laws are observed, and that the decisions of the Government are implemented. The powers of Government representatives and the procedures of their implementation shall be established by law. In cases and according to procedures provided by law, the Seimas may introduce direct administration on local government territory.

Article 124. Deeds and actions of local government Councils as well as of their executive bodies and officers which violate the rights of citizens and organizations may be appealed against in court.

Chapter 11: Finances, the State Budget

Article 125. In the Republic of Lithuania, the central bank shall be the Bank of Lithuania, which is owned by the State. The Bank of Lithuania shall have the exclusive right to issue bank notes. The procedures for the organization and activities of the Bank of Lithuania as well as its powers shall be established by law.

Article 126. The Bank of Lithuania shall be directed by the Bank Board, which shall consist of the Board Chairperson, the deputies to the Chairperson, and the Board members. The Board Chairperson of the Bank of Lithuania shall be appointed for a five-year term by the Seimas on the nomination of the President of the Republic of Lithuania.

Article 127. The budgetary system of the Republic of Lithuania shall consist of the independent State budget of the Republic of Lithuania and the independent local governments' budgets. State budget revenues shall be accrued from taxes, compulsory payments, dues, receipts from State property, and other income. Taxes, other budgetary payments, and dues shall be established by the laws of the Republic of Lithuania.

Article 128. Decisions concerning State loans and other basic property liabilities of the State shall be adopted by the Seimas on the recommendation of the Government. Procedures concerning the management, utilization, and disposal of State property shall be established by law.

Article 129. The budget year shall begin on the 1st of January and shall end on the 31st of December.

Article 130. The Government of the Republic of Lithuania shall prepare a draft budget of the State, and shall submit it to the Seimas no later than 75 days before the end of the budget year.

Article 131. The draft budget of the State shall be considered by the Seimas, and shall be approved by law by the beginning of the new budget year. Upon considering the draft budget, the Seimas may only increase expenditures upon specifying financial sources for said expenditures. Expenditures established by law may not be reduced as long as said laws are not amended.

Article 132. If the State Budget is not approved by the prescribed date, monthly budget expenditures at the beginning of the budget year may not exceed one-twelfth of the State Budget expenditures of the previous budget year. During the budget year the Seimas may change the budget. It shall be changed according to the same procedure by which it was drafted, adopted and approved. As necessary, the Seimas may approve an additional budget.

Chapter 12: Control of the State

Article 133. The system and powers of State control shall be established by law. State control shall be directed by the State Controller who shall be appointed for a five-year term by the Seimas upon the nomination of the President of the Republic of Lithuania.

Before taking office, the State Controller shall take an oath. The oath shall be established by law.

Article 134. State control shall supervise the legality of the management and utilization of State property and the realization of the State budget. The State Controller shall give an account to the Seimas on the annual execution of the State budget.

Chapter 13: Foreign Policy and National Defense

Article 135. In conducting foreign policy, the Republic of Lithuania shall pursue the universally recognized principles and norms of international law, shall strive to safeguard national security and independence as well as the basic rights, freedoms and welfare of its citizens, and shall take part in the creation of sound international order based on law and justice. In the Republic of Lithuania, war propaganda shall be prohibited.

Article 136. The Republic of Lithuania shall participate in international organizations provided that they do not contradict the interests and independence of the State.

Article 137. Weapons of mass destruction and foreign military bases may not be stationed on the territory of the Republic of Lithuania.

Article 138. The Seimas shall either ratify or denounce international treaties of the Republic of Lithuania which concern:

(1) the realignment of the State borders of the Republic of Lithuania;

(2) political cooperation with foreign countries, mutual assistance, or treaties related to national defense;

(3) the renunciation of the utilization of, or threatening by, force, as well as peace treaties;

(4) the stationing and status of the armed forces of the Republic of Lithuania on the territory of a foreign state;

(5) the participation of Lithuania in universal or regional international organizations; and

(6) multilateral or long-term economic agreements.

Laws and international treaties may provide for other cases in which the Seimas shall ratify international treaties of the Republic of Lithuania. International agreements which are ratified by the Seimas of the Republic of Lithuania shall be the constituent part of the legal system of the Republic of Lithuania.

Article 139. The defense of the State of Lithuania from foreign armed attack shall be the right and duty of every citizen of the Republic of Lithuania. Citizens of the Republic of Lithuania are obliged to serve in the national defense service or to perform alternative service in the manner established by law. The organization of national defense shall be established by laws.

Article 140. The main issues of national defense shall be considered and coordinated by the State Defense Council which, consists of the President of the Republic of Lithuania, the Prime Minister, the Seimas Chairperson, the Minister of National Defense, and the Chief Commander of the Army. The State Defense Council shall be headed by the President of the Republic of Lithuania. Procedures for its formation,

activities and powers shall be established by law. The Chief Commander of the armed forces shall be the President of the Republic of Lithuania. The Government, the Minister of National Defense, and the Chief Commander of the Army shall be responsible to the Seimas for the provision and command of State armed forces. The Minister of National Defense may not be a serviceman who has not yet retired from active service.

Article 141. Soldiers in active military service or alternative service, officers of the national defense, the police and the internal service, noncommissioned officers, reenlistees who have not retired from service, and other paid officers of military and security services may not be members of the Seimas or of local government Councils. They may not hold elected or appointed posts in State civil service, and may not take part in the activities of political parties and political organizations.

Article 142. The Seimas shall impose martial law, shall announce mobilization or demobilization, and shall adopt decisions to use the armed forces in defense of the homeland or for the fulfillment of the international obligations of Lithuania. In the event of an armed attack which threatens the sovereignty of the State or territorial integrity, the President of the Republic of Lithuania shall immediately pass a decision concerning defense against such armed aggression, shall impose martial law throughout the country or in separate parts thereof, shall declare mobilization, and shall submit these decisions to the next sitting of the Seimas; in the period between sessions, the President shall immediately convene an unscheduled session of the Seimas. The Seimas shall approve or abolish the decision of the President of the Republic of Lithuania.

Article 143. In the event that a regular election must be held in time of military actions, either the Seimas or the President shall adopt a decision to extend the terms of the Seimas, the President, and local government Councils. In such cases, elections must be held within three months of the end of the war.

Article 144. In the event that the constitutional system or public order of the State is threatened, the Seimas may declare a state of emergency throughout the country, or in separate parts thereof, for a period not exceeding six months. In the event of emergency, and if the Seimas is not in session, the President of the Republic shall have the right to pass such a decision, and shall, at the same time, convene an unscheduled session of the Seimas for the consideration of this issue. The Seimas shall approve or abolish the decision of the President of the Republic of Lithuania. States of emergency shall be regulated by law.

Article 145. During martial law or a state of emergency, the rights and freedoms specified in Articles 22, 24, 25, 32, 35, and 36 of the Constitution may be temporarily restricted.

Article 146. The State shall provide and care for soldiers whose health is damaged during military service, as well as for the families of soldiers who lose their lives during military service. The State shall also provide for citizens whose health is damaged while defending the homeland, and for the families of citizens who lose their lives in defense of the State.

Chapter 14: Amending the Constitution

Article 147. In order to amend or append the Constitution of the Republic of Lithuania, a proposal must be submitted to the Seimas by either no less than one-fourth of the members of the Seimas, or by at least 300,000 voters. During a state of emergency or martial law, amendments to the Constitution may not be made.

Article 148. The provision of Article 1 of the Constitution that the State of Lithuania is an independent democratic republic may be amended only by a referendum in which at least three-fourths of the electorate of Lithuania votes in favor thereof. The provisions of Chapter 1 ("The State of Lithuania") and Chapter 14 ("Amending the Constitution") may be amended only by referendum. Amendments of other chapters of the Constitution must be considered and voted upon in the Seimas twice. There must be a lapse of at least three months between each vote. Bills for constitutional amendments shall be deemed adopted by the Seimas if, in each of the votes, at least two-thirds of all the members of the Seimas vote in favor of the enactment. An amendment to the Constitution which is rejected by the Seimas may not be submitted to the Seimas for reconsideration for the period of one year.

Article 149. The adopted law on an amendment to the Constitution shall be signed by the President of the Republic of Lithuania and officially promulgated within 5 days. If the President of the Republic of Lithuania does not sign and promulgate such a law in due time, this law shall become effective when the Chairperson of the Seimas signs and promulgates it. The law on an amendment to the Constitution shall become effective no earlier than one month after the adoption thereof.

Final Provisions

Article 150. The constituent parts of the Constitution of the Republic of Lithuania shall be:

The 11 February 1991 Constitutional Law "On the State of Lithuania";

The 8 June 1992 Constitutional Act "On the Nonalignment of the Republic of Lithuania with Post-Soviet Eastern Alliances."

Article 151. This Constitution of the Republic of Lithuania shall become effective the day following the official promulgation of the results of the Referendum, provided that in the Referendum more than half of the electorate of Lithuania voted in favor thereof.

Article 152. The procedure for the enforcement of this Constitution and separate provisions thereof shall be regulated by Law of the Republic of Lithuania, "On the Procedure for the Enforcement of the Constitution of the Republic of Lithuania," which, together with this Constitution of the Republic of Lithuania, shall be adopted by referendum.

Article 153. Upon the adoption of this Constitution in the Referendum, the Seimas of the Republic of Lithuania may, by 25 October 1993, amend by three-fifths majority vote of all the Seimas members the provisions of the Constitution of the Republic of Lithuania set forth in Articles 47, 55, 56, in item (2) of sentence 2 of Article 58, in

Articles 65, 68, 69, in items 11 and 12 of Article 84, in the first part of Article 87, in Articles 96, 103, 118, and in the final sentence of Article 119.

Article 154. Upon their adoption by referendum, the Constitution of the Republic of Lithuania and the Law of the Republic of Lithuania "On the Procedure for the Enforcement of the Constitution of the Republic of Lithuania" shall be signed and promulgated within 15 days by the President of the Supreme Council of the Republic of Lithuania.

Law on the Procedure for the Enforcement of the Constitution of the Republic of Lithuania

Article 1. Upon the enforcement of the Constitution of the Republic of Lithuania, the Provisional Basic Law of the Republic of Lithuania shall become null and void.

Article 2. Laws, other legal acts, or parts thereof which were in effect on the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania, shall be effective provided that they do not contradict the Constitution and this law, and shall remain effective until they are either declared null and void or coordinated with the provisions of the Constitution.

Article 3. Provisions of the laws of the Republic of Lithuania which determine the status of the supreme institutions of State power and administration of the Republic of Lithuania as well as the status of deputies and local governments shall be effective until the elected Seimas decides otherwise.

Article 4. The powers of the Supreme Council and its deputies shall be terminated when the elected Seimas of the Republic of Lithuania convenes into its first sitting. The members of the Seimas of the Republic of Lithuania shall convene in a sitting on the third working day after the announcement of the Central Electoral Committee, following both election rounds; that at least three-fifths of all the members of the Seimas have been elected.

Article 5. The following text shall be the established oath of members of the Seimas of the Republic of Lithuania:

> "I (full name),
>
> Swear to be faithful to the Republic of Lithuania;
>
> Swear to respect and observe its Constitution and laws and to protect the integrity of its territories;
>
> Swear to strengthen, to the best of my ability, the independence of Lithuania, and to conscientiously serve my Homeland, Democracy, and the well-being of the people of Lithuania. So help me God."

The oath may also be taken omitting the last sentence.

Article 6. The legal situation during the period that there is no President of the Republic shall be equivalent to the situation which is provided for in Article 89 of the Constitution of the Republic of Lithuania. As necessary, the Seimas, by a majority vote of more than half of all the members of the Seimas, may prolong the term provided in Article 89 for a period not exceeding four months.

Article 7. Judges of the Constitutional Court of the Republic of Lithuania, including the Chairperson of the Constitutional Court, must be appointed not later than one month after the President of the Republic is elected. Upon the initial appointment of Constitutional Court judges, three of them shall be appointed for a three-year term, three for a six-year term, and three for a nine-year term. The President of the Republic, the Chairperson of the Seimas, and the Chairperson of the Supreme Court shall indicate in their proposals to appoint Constitutional Court judges which of them shall be appointed for three years, which for six, and which for nine. The judges of the Constitutional Court who are appointed for three- or six-year terms may hold the same office for one more term after an interval of at least three years.

Article 8. The provisions of sentence 3 of Article 20 of the Constitution of the Republic of Lithuania shall become applicable once the laws on the criminal procedure of the Republic of Lithuania are coordinated with this Constitution.

Vytautas Landsbergis
President, Supreme Council
Republic of Lithuania
Vilnius, 6 November 1992
(Approved by the citizens of the Republic of Lithuania in the Referendum on 25 October 1992)

THE CONSTITUTIONAL ACT OF POLAND

([Done on the] 17th October, 1992 On the Mutual Relations Between the Legislative and Executive Institutions of the Republic of Poland and on Local Self-government [*Journal of Laws of the Republic of Poland* of 23rd November, 1992, No. 84, item 426] for the purpose of improving the activity of the supreme authorities of the State, pending the passing of a new Constitution, of the Republic of Poland, is enacted as follows:)

Chapter 1: General Principles

Article 1. The State Organs of legislative power shall be the Sejm and the Senate of the Republic of Poland, executive power shall be the President of the Republic of Poland and the Council of Ministers, and judicial power shall be independent courts.

Article 2. Deputies and Senators, persons who are members of the Council of Ministers, as well as other persons who hold offices or perform public functions on behalf of the State, as specified in the Constitutional act, are forbidden to engage in any activity inconsistent with exercising a mandate, office or function within the scope and under penalties determined by law. Persons mentioned [above] shall provide at the beginning and at the end of their term of office, or before entering into and after leaving office, a statement concerning their financial situation.

Chapter 2: The Sejm and the Senate

Article 3. The Sejm shall be composed of 460 Deputies chosen by secret ballot in general, equal, direct and proportional elections. The Senate shall be composed of 100 Senators chosen by voivodeship[1] from the term of the Sejm, by secret ballot, in free, general and direct elections.

Article 4. The term of the Sejm shall be 4 years beginning with the date of its election. The President of the Republic of Poland shall order the elections to the Sejm and the Senate to be held on a day which is not a day of work and which shall be within the month prior to expiry of the current term of office. The Sejm may be dissolved by its own resolution carried by a two-thirds majority vote of the number of Deputies required by law. In cases specified by this Act, the President may, after consultation with the Marshal of the Sejm and the Marshal of the Senate, dissolve the Sejm. The term of office of the Sejm and the Senate shall expire on the day of proclamation of such resolution of the Sejm, or of the order of the President on a dissolution of the Sejm. In the event of dissolution of the Sejm by the President, or by virtue of a resolution of the

1 Voivodeship: a unit of central governmental administration covering a specified geographical area. At present, there are 49 such voivodeships in Poland.

Sejm, the President shall order the elections on a day which is not a day of work and which shall be no sooner than 3 months and no later than 4 months after expiry of the term of office of the Sejm.

Article 5. The validity of elections or any complaint laid against the validity of the election of a Deputy shall be adjudicated upon by the Supreme Court.

Article 6. A Deputy shall be a representative of the whole Nation. He[2] shall not be bound by any instruction of the electorate nor shall he be subject to recall.

Article 7. A Deputy shall not be held accountable for his activities resulting from the exercise of his mandate within the period of such mandate or after its expiry, unless he has violated the personal rights of other persons. A Deputy shall be neither criminally liable, nor arrested nor detained without the authorization of the Sejm given by a two-thirds majority vote in the presence of at least half of the total number of Deputies.

Article 8. The office of a Deputy shall not be held jointly with the office of a Senator, nor with any of the following offices: a judge of the Constitutional Tribunal, a judge of the Tribunal of State, the President of the National Bank of Poland, the Commissioner of Citizens' Rights, the President of the Supreme Chamber of Control, an ambassador or a voivode.

Article 9. The Sejm shall conduct debates during sittings. The first sitting of the newly elected Sejm shall be summoned by the President within 30 days following its election.

Article 10. The Sejm shall elect from amongst its members a Marshal, Deputy Marshals and members of Committees. The Marshal and the Deputy Marshals shall constitute the Presidium of the Sejm. The presidium shall summon sittings of the Sejm and shall supervise its activities. The term of office of the Marshal and Deputy Marshals of the Sejm shall expire upon the inaugural sitting of the Sejm elected to a new term of office.

Article 11. The Sejm may appoint a Committee in order to examine a particular matter, which shall, under the procedure specified in the Code of Criminal Procedure, have the right to conduct examinations of persons summoned by it.

Article 12. The debates of the Sejm shall be open to the public. The Sejm may resolve by an absolute majority vote upon the holding of a debate in secret,[3] should this be required in the interests of the State. The Prime Minister, members of the Council of Ministers, as well as Ministers of State may speak during a sitting of the Sejm notwithstanding the order of the speakers and at any time they wish to do so.

Article 13. The Sejm shall pass laws by majority vote, requiring the presence of at least half of the total number of Deputies, unless constitutional statutes provide otherwise. The same procedure shall be applied by the Sejm in the adoption of other resolutions, unless the provisions of statutes and resolutions of the Sejm provide otherwise.

Article 14. The detailed organization and procedure of the work of the Sejm shall be defined by Rules of Procedure adopted by the Sejm.

2 Whenever the male term is used in the text, it should be understood to refer also to the female. The Polish Constitution forbids discrimination based upon gender. See Articles 67 and 78 of the Constitutional Provisions Continued in Force.

3 That is, with the public excluded.

Article 15. The right to introduce legislation shall belong to Deputies, to the Senate, to the President and to the Council of Ministers. The Council of Ministers, upon introducing a bill, shall indicate its financial consequences and shall enclose drafts of basic acts designed to effect its implementation. The right to propose amendments to bills during their consideration by the Sejm shall belong to the person who has introduced the bill, to Deputies and to the Council of Ministers. The Marshal of the Sejm, by his own initiative or upon a motion of the Council of Ministers, may refuse to order a vote upon an amendment which has not previously been referred to the relevant Committee. The person who has introduced a bill may, during the course of its consideration, withdraw it at any time prior to the conclusion of the first reading of the bill. In the event of withdrawal of a bill, the Sejm shall decide on further procedure with respect to it.

Article 16. The Council of Ministers may, in well-founded instances, declare a bill introduced by itself as urgent. The Rules of procedure of the Sejm shall define the modifications in the legislative procedure when a bill is declared urgent. The Marshal of the Sejm shall refuse to order a vote upon an amendment related to an urgent bill, which has not been previously referred to the relevant Committee. The periods, concerning the procedure applicable to an urgent bill, specified in Article 17, sentence 2 and Article 18 sentence 2, shall be reduced to 7 days.

Article 17. A statute adopted by the Sejm shall be submitted to the Senate by the Marshal of the Sejm. The Senate may, within 30 days, adopt a statute, introduce amendments to its text or reject it. If, within the period of 30 days following the submission of the statute, the Senate fails to adopt an appropriate resolution, the statute shall be considered passed. Any amendments by the Senate, imposing a burden upon the State Budget, shall be required to indicate a source of finance therefore. A resolution of the Senate rejecting a statute, or an amendment proposed by a resolution of the Senate, shall be considered accepted unless the Sejm rejects it by an absolute majority vote.

Article 18. A statute adopted by the Sejm and the Senate shall be submitted by the Marshal of the Sejm to the President for signature. The President shall sign a statute within 30 days following its submission and shall order its promulgation in the *Journal of Laws of the Republic of Poland.* The President may refuse to sign a statute and refer it to the Sejm for its reconsideration, giving reasons therefor. If the said statute is repassed by the Sejm, by a two-thirds majority vote, the President shall, within 7 days, sign the statute and shall order its promulgation in the *Journal of Laws of the Republic of Poland,* unless he refers it to the Constitutional Tribunal according to the following procedure. The President may, before signing a statute, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The reference by the President to the Constitutional Tribunal shall suspend the time allowed for signing a statute. The President cannot refuse to sign a statute which has been judged, by the Constitutional Tribunal, as conforming to the Constitution.

Article 19. A referendum may be held in cases of particular interest to the State. The right to order a referendum shall belong to:

(1) the Sejm, by its own resolution, carried by an absolute majority vote, or,

(2) the President, with the consent of the Senate, passed by an absolute majority vote.

The result of a referendum shall be binding when more than a half of the total number of persons eligible to vote have taken part in it. The principles and the methods of holding a referendum shall be established by law.

Article 20. The revenues and expenditures of the State for a calendar year shall be specified in the Budget. In particular cases, the revenues and expenditures for a period shorter than a year may be specified in an interim budget.

Article 21. The Council of Ministers shall be obliged to submit to the Sejm a draft Budget in sufficient time to allow for its adoption before the beginning of a fiscal year, and in particular cases, before the end of the first quarter of a year. The said time period and the requirements for a draft budget shall be established by law. Within a period of 20 days following the submission of the Budget passed by the Sejm, the Senate may resolve upon adopting it or introducing amendments thereto. The Council of Ministers shall, in the event of a failure to pass a Budget or an interim Budget, conduct its finances pursuant to the draft Budget. If the Budget has not been passed within a period of three months following the submission of a draft fulfilling the requirements of budgetary law, the President may dissolve the Sejm.

Article 22. The Council of Ministers shall be obliged to submit to the Sejm a report upon the implementation of the Budget and reports on the implementation of other financial plans of the State adopted by the Sejm within a period of 6 months following the end of a fiscal year. The Sejm shall perform an assessment of the implementation of the Budget and other financial plans of the State within a period of 2 months following the receipt of the report and shall resolve upon the granting of approval to the Council of Ministers, after receiving the opinion of the Supreme Chamber of Control, presented by its President. In the event of such approval not being given, the Council of Ministers shall resign.

Article 23. Upon application by the Council of Ministers, with reasons given, the Sejm may by statute, affirmed by an absolute majority vote, authorize the Council to issue regulations which shall have the force of statute. The statute authorizing the Council of Ministers to issue regulations having the force of statute shall specify the subject of such regulations and the time period during which the authorization shall be in force. Whilst the statute granting authorization to the Council of Ministers to issue regulations which have the force of statute is in effect, the right to introduce statutes within the scope mentioned here shall belong exclusively to the Council of Ministers. The statute shall not authorize the Council of Ministers to issue regulations which have the force of statute concerning: changes to the Constitution, election of a President, election of the Sejm, the Senate and local self-government organs, the State Budget, personal freedoms and rights of citizens, their political freedoms and rights, as well as rights and duties resulting from employment contracts and social security insurance, and also any consent to the ratification of international agreements mentioned in Article 33, sentence 2 of this Act. The President shall sign a regulation which has the force of statute, submitted to him by Council of Ministers, and shall order its pro-

mulgation in the *Journal of Laws of the Republic of Poland.* The President may, before signing such regulation having the force of statute, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The President may refuse to sign a regulation which has the force of statute and shall return it to the Council of Ministers within a period of 14 days. A regulation which has the force of statute, returned by the President, may be introduced to the Sejm by the Council of Ministers, in the form of a bill.

Article 24. The Sejm may declare a state of war only upon a military attack launched against the Republic of Poland, or in the event that an international agreement imposes an obligation of joint defense against an act of aggression. In cases when the Sejm is not in session, a state of war may be declared by the President. The terms, legal effects and the mode of implementation of such a declaration of a state of war shall be established by law.

Article 25. A Deputy may address an interpellation or question to the Prime Minister or to an individual member of the Council of Ministers. An interpellation shall be submitted in writing and shall be answered within a period of 21 days. If the interpolator is not satisfied with the response, he may move to the Marshal of the Sejm for an additional answer and may request that it be given at a sitting of the Sejm. Questions shall be submitted orally, during each sitting of the Sejm, to be answered immediately. Detailed principles of submitting interpellations and questions, and the method of answering them shall be defined by Rules of Procedure of the Sejm.

Article 26. Articles 5–10 and 12–14 shall apply, respectively, to the Senate and Senators.

Article 27. In cases specified in the Constitutional Act, the Sejm and the Senate sitting jointly, presided over by the Marshal of Sejm, shall constitute the National Assembly.

Chapter 3: The President of the Republic of Poland

Article 28. The President of the Republic of Poland shall be the supreme representative of the Polish State in internal and international relations. The President shall ensure observance of the Constitution, safeguard the sovereignty and security of the State, the inviolability and integrity of its territory, as well as upholding international treaties.

Article 29. The President shall be elected by the Nation. The President shall be elected, by secret ballot, in general equal and direct elections by an absolute majority of valid votes. If no candidate has gained an absolute majority, a second ballot shall be held on the fourteenth day following the first ballot. The two candidates who have gained, sequentially, the largest number of votes in the first ballot, and have not withdrawn their candidature, shall take part in the second ballot. The person who gains the largest number of valid votes shall be considered elected. The President shall be elected for a term of five years, and may be reelected President only for one more term. Only a person who is a citizen of the Republic of Poland, holding a full electoral franchise and who has attained the age of 35 years, may be elected President. The term of office of

the President shall commence on the date of his inauguration. The election of the President shall be ordered by the Marshal of the Sejm no sooner than 4 months and no later than 3 months before the expiry of the term of office of the serving President, or within 14 days after the office comes vacant, specifying the date of the election which shall be on a day no later than 2 months following the day of his order. The election shall be held on a day which is not a day of work.

Article 30. The President shall succeed to office upon making the following oath in the presence of the National Assembly: "Assuming, by the will of the Nation, the office of the President of the Republic of Poland, I do solemnly swear to be faithful to the provisions of the Constitution; I pledge that I will steadfastly guard the dignity of the Nation, the independence and security of the State, and also the good of the Homeland and the prosperity of its citizens shall forever remain my supreme obligation." The oath may be also made with the additional words "So help me, God." Accession to office by a President elected before expiry of the term of the outgoing President shall follow on the next day after expiry of the serving President's term.

Article 31. The President shall hold no other office and shall be neither a Deputy nor a Senator.

Article 32. The President shall exercise general supervision in the field of international relations. The President shall appoint and recall the plenipotentiary representatives of the Republic of Poland to foreign countries and shall receive the Letters of Credence and recall of foreign diplomatic representatives accredited to him. Relations with foreign states, as well as with Polish diplomatic representatives abroad, shall be maintained through the appropriate minister dealing with foreign affairs.

Article 33. The President shall ratify and denounce international treaties, and shall notify the Sejm and the Senate thereof. Ratification and denunciation of international treaties relating to the borders of the State, to defensive alliances and to treaties which would burden the State with financial liabilities, or which would involve changes in legislation, shall require authorization by statute.

Article 34. The President shall exercise general supervision with respect to the external and internal security of the State. The advisory organ to the President in connection with such matters shall be the National Security Council.

Article 35. The President shall be the Supreme Commander of the Armed Forces of the Republic of Poland. The President, in agreement with the Minister of National Defense, shall appoint and dismiss deputy chiefs of the General Staff, commanders of branches of the Armed Forces and commanders of military districts. The President shall appoint a Commander-in-Chief for the period of war and may dismiss him.

Article 36. In the event of State security being endangered by external forces, the President may introduce martial law in a part of or upon the whole territory of the Republic of Poland, and may also declare a partial or general mobilization. The organization of the authorities of the State during a period of martial law, and other legal consequences of such declaration of martial law, shall be established by law.

Article 37. The President may, for a definite period of time but not longer than 3 months, introduce a state of emergency in a part of or upon the whole territory of the

State in the event of threats to its internal security or following upon natural calamity. This period may be extended only once by not longer than another 3 months with the consent of the Sejm. Whilst a state of emergency exists, the Sejm shall not be dissolved, and its term of office shall not expire before 3 months following the date of termination of that state of emergency. Neither the Constitution nor the electoral laws shall be changed during the period of a state of emergency. The detailed terms, legal effects and the mode of implementation of a state of emergency shall be established by law.

Article 38. The Prime Minister shall inform the President about fundamental matters concerning the activity of the Council of Ministers. On matters of particular importance to the State, the President may summon sittings of the Council of Ministers and preside over them.

Article 39. The President may deliver a Message to the Sejm or to the Senate. Such Message shall not be a subject of debate.

Article 40. The President shall propose to the Sejm the appointment and recall of the President of the National Bank of Poland.

Article 41. The President shall grant and revoke Polish citizenship.

Article 42. The President shall appoint judges upon a motion of the National Council of the Judiciary.

Article 43. The President shall have the power of pardon.

Article 44. The President shall confer orders and decorations.

Article 45. In order to implement statutes and upon the basis of powers specified therein, the President shall issue regulations and executive orders. The President shall issue executive orders within the scope of his statutory powers.

Article 46. Legal acts issued by the President, in order to be valid, shall be countersigned by the Prime Minister or by the appropriate minister who submitted the matter to the President.

Article 47. The provisions of Article 46 shall not apply to:

(1) summoning of the first sitting of the newly elected Sejm and Senate;

(2) dissolution of the Sejm;

(3) proclamation of the election to the Sejm and to the Senate;

(4) introduction of legislation;

(5) signing and refusing to sign a statute or regulation which has the force of statute;

(6) making application to the Constitutional Tribunal for adjudication upon the conformity of a statute, or of a regulation which has the force of statute, to the Constitution;

(7) nomination of the Prime Minister and appointment of the whole Council of Ministers;

(8) accepting resignation of the Council of Ministers and obliging that body to continue with its duties;

(9) summoning sittings of the Council of Ministers;

(10) a preliminary motion to bring a person to constitutional accountability before the Tribunal of State;

(11) submitting motions that an investigation be made by the Supreme Chamber of Control;

(12) appointment and recall of the President of the Chief Administrative Court and of presidents of the Supreme Court;

(13) the powers of the President, mentioned in Article 19, item 2, and in Articles 39–44 and 48.

Article 48. The President may appoint Ministers of State[4] to represent him in matters related to the exercise of his powers. The executive office of the President shall be the President's Chancellory. The rules and regulations of the Chancellory shall be formulated by the President who shall also appoint and dismiss its Chief Officer.

Article 49. The office of the President shall become vacant before the term expires:

(1) upon his death;

(2) upon his resignation from office;

(3) upon the declaration by the National Assembly of his permanent incapacity to exercise the duties of President due to the state of his health. Such decision shall be taken by at least a two-thirds majority vote requiring the presence of at least half of the total number of members of the National Assembly;

(4) upon his recall from office following a decision of the Tribunal of State.

In the event of a vacancy in the office of President, then until accession to the office by a new President, and also in the case of the President's temporary incapacity to exercise his duties, the Marshal of the Sejm shall act as President and, if he is not able to exercise this function, the Marshal of the Senate. A person acting as President shall not dissolve the Sejm.

Article 50. The President may be held accountable for an infringement of the Constitution and the laws, as well as for committing an offense, only by indictment before the Tribunal of State. An indictment may be brought against the President upon the resolution of the National Assembly carried by at least a two-thirds majority vote of the total number of its members, on the motion of at least one-quarter of the total number of its members. The President, upon being indicted, shall be suspended from executing all functions of his office. Article 49, paras. 2 and 3 shall apply, accordingly.

Chapter 4: The Council of Ministers of the Republic of Poland (The Government)

Article 51. The Council of Ministers shall conduct the internal affairs and the foreign policy of the Republic of Poland. The Council of Ministers shall manage the entire governmental administration.

Article 52. The Council of Ministers shall made decisions in all matters relating to the policy of the State, which have not been reserved by this Constitutional Act or other statute to the President or to another organ of State administration or self-government. The Council of Ministers, in particular:

(1) shall ensure the implementation of statutes;

4 That is, to function within his own chancellory.

(2) shall issue regulations which have the force of statutes, satisfying the requirements specified in Article 23 of this Act;

(3) shall direct, coordinate and control the work of all other organs of State administration, being responsible for their activity to the Sejm;

(4) shall protect, pursuant to statutes, the interests of the State Treasury;

(5) shall prepare the draft Budget and drafts of other financial plans of the State, and supervise their implementation, following their approval by the Sejm;

(6) shall supervise local self-government and other forms of self-government within the limits and by means specified in the Constitutional Act and other statutes;

(7) shall maintain the relations and shall conclude treaties with the governments of foreign states and with international organizations;

(8) shall ensure the external and internal security of the State.

Article 53. The Council of Ministers (the Government) shall be composed of:

(1) the Prime Minister as its chairman;

(2) Deputy Prime Ministers;

(3) Ministers;

(4) Chairmen of Commissions and Committees specified by law, who exercise functions of the main organs of State administration, appointed pursuant to the provisions of Articles 57–62.

In the event that a Deputy Prime Minister has not been appointed, his duties may be exercised by another Minister. The Council of Ministers shall act collectively. The organization and procedure of its works shall be established by law.

Article 54. For the purpose of implementing statutes, and pursuant to authorization provided thereunder, the Council of Ministers shall issue regulations. The Council of Ministers shall pass regulations within the scope of its constitutional powers.

Article 55. The Prime Minister shall direct the work of the Council of Ministers, and he shall coordinate and control the work of individual Ministers. The Prime Minister shall be the chief officer of all employees of the governmental administration. For the purpose of implementing statutes, and pursuant to authorization provided thereunder, the Prime Minister shall issue regulations.

Article 56. The Minister shall direct the work of a unit of state administration. The scope of the Minister's activity shall be established by law. The Minister shall direct the work of his unit of state administration with the assistance of the Secretaries and Undersecretaries of State, who are appointed by the Prime Minister on the motion of the Minister. For the purpose of implementing statutes and pursuant to authorization provided thereunder, the Minister shall issue regulations and executive orders. The Council of Ministers may, on the motion of Prime Minister, annul a regulation or an executive order issued by a Minister.

Article 57. The President shall nominate the Prime Minister, and on his motion the President shall appoint the Council of Ministers according to the composition proposed by the Prime Minister, within a period of 14 days following the first sitting of the Sejm or the acceptance of the resignation of the Council of Ministers. The appointment of the Prime Minister by the President shall be in conjunction with the appoint-

ment of the Council of Ministers. The Prime Minister shall, within a period not longer than 14 days following appointment by the President, submit to the Sejm a program of activity of the Council of Ministers together with a motion requiring a vote of confidence. The Sejm shall pass a vote of confidence by an absolute majority vote.

Article 58. In the event that a Council of Ministers has not been appointed pursuant to the provisions of Article 57, the Sejm shall choose the Prime Minister and a Council of Ministers composed as indicated by him, by an absolute majority vote within a period of 21 days. The President shall appoint a Government chosen by such means and accept its oath of office.

Article 59. In the event that the Council of Ministers has not been appointed pursuant to the provisions of Article 58, the President shall appoint the Prime Minister, and on motion of the Prime Minister, shall appoint a Council of Ministers pursuant to the provisions of Article 57, provided that the Sejm has passed a vote of confidence by majority vote.

Article 60. In the event that a Council of Ministers has not been appointed pursuant to the provisions of Article 59, the Sejm shall choose a Prime Minister and a Council of Ministers composed as indicated by him, by majority vote within a period of 21 days. The President shall appoint a Government chosen by such means and accept its oath of office.

Article 61. The Prime Minister shall lay a motion to appoint the Ministers of Foreign Affairs, of National Defense and of Internal Affairs and consultation with the President.

Article 62. In the event that a Council of Ministers has not been appointed pursuant to the provisions of Article 60, the President shall dissolve the Sejm or, within a period of 14 days, shall appoint the Prime Minister and the Council of Ministers for a period of not longer than 6 months. In the event that the Sejm has not passed a vote of confidence in this Government before the expiry of this period and has not passed a vote of no-confidence pursuant to the provisions of Article 66, the President shall dissolve the Sejm.

Article 63. The Prime Minister and Ministers shall, in the presence of the President make the following oath: "Assuming this office of Prime Minister (Minister) I do solemnly swear to be faithful to the provisions of the Constitution, and that the good of the Homeland and the prosperity of its citizens shall forever remain my supreme obligation."

The oath may also be made with the additional words "So help me, God."

Article 64. The Prime Minister shall submit the resignation of the Government to the President in the following cases:

(1) the convocation of the newly elected Sejm;

(2) the resignation of the Council of Ministers or of the Prime Minister from office;

(3) a vote of confidence has not been granted to the Council of Ministers by the Sejm;

(4) a vote of no-confidence has been passed by the Sejm.

Article 65. In the event that a Prime Minister has submitted the resignation of the Government for reasons specified in Article 64, items (1)–(3), the President shall accept the resignation. The President, upon accepting a resignation of the Govern-

ment, shall oblige it to continue with its duties until a new Council of Ministers is appointed

Article 66. The Sejm may resolve, by an absolute majority, upon a vote of no-confidence in the Council of Ministers. A motion for a vote of no-confidence may be moved by at least 46 Deputies and shall be put to a vote no sooner than 7 days after it has been submitted. In the event that a vote of no-confidence has not been passed, a subsequent motion of a like kind may be made after 3 months following the day of the vote upon the previous motion. This time limit shall not apply if the motion is passed by at least 115 Deputies. The Sejm, having passed a vote of no-confidence, may at the same time choose a new Prime Minister and oblige him to form a Government pursuant to the provisions of Article 58. If the Sejm has passed a vote of no-confidence, without at the same time choosing a new Prime Minister, the President shall accept the resignation of the Government or shall dissolve the Sejm.

Article 67. The Sejm may pass a vote of no-confidence in an individual Minister. The provisions of Article 66, sentences 1–3 shall apply, as the case may be. A Minister, in whom a vote of no-confidence has been passed by the Sejm, shall resign and the President shall accept his resignation.

Article 68. A Minister may resign from his office by offering his resignation to the Prime Minister. Upon a motion by the Prime Minister, the President may effect changes in the office of individual Ministers.

Article 69. A voivode is an officer of governmental administration and a representative of the Council of Ministers in a voivodeship. The procedure of appointment and recall of voivodes, as well as their scope of activity, shall be established by law.

Chapter 5: Local Self-Government

Article 70. Local self-government shall be the basic form of organization of local public life. Units of local self-government shall possess legal personality as communities of inhabitants in a particular area existing by force of law. The right of ownership and other property rights vested in a unit of local self-government shall be the property of the community. The commune shall be the basic unit of local self-government. Other types of units of local self-government shall be established by law.

Article 71. Local self-government shall concern itself, with the limits defined by law, with the performance of a substantial part of public tasks, except for those tasks which are, by statute, reserved exclusively to the competence of governmental administration. Units of local self-government shall perform public tasks ascribed to them, in their own names and with their own responsibility, in order to satisfy the needs of the inhabitants. Units of local self-government, within the limits defined by law, shall exercise powers of governmental administration. For this purpose, they shall be provided with appropriate financial resources. Units of local self-government shall fulfill their tasks by means of their own constitutive and executive bodies, and shall, within the limits defined by law, be free to formulate their organizational structures.

Article 72. Elections to constitutive bodies of self-government shall be general and

equal, and shall be done by secret ballot. The inhabitants may take decisions by means of a local referendum. The requirements and procedures of holding a local referendum shall be established by law.

Article 73. The revenues of units of local self-government shall consist of their own revenues as well as subsidies and grants. The sources of revenues for units of local self-government in the field of public tasks shall be guaranteed by law.

Article 74. The supervision of the activity of units of local self-government shall be defined by law.

Article 75. The principles governing association of units of local self-government and the representation of their interests to the State authorities shall be defined by law.

Chapter 6: Transitional and Final Provisions

Article 76. The provisions of Article 8 shall not apply to persons who take office before the day of coming into force of this Act.

Article 77. The Constitution of the Republic of Poland of 22nd July, 1952 (Dziennik Ustaw—Journal of Laws of 1976, No. 7, item 36; of 1980, No. 22, item 81; of 1982, No. 11, item 83; of 1983, No. 39, item 175; of 1987, No. 14, item 82; of 1988, No. 19, item 129; of 1989, No. 19, item 101, and No. 75, item 444; of 1990, No. 16, item 94, No. 29, item 171, and No. 67, item 397; of 1991, No. 41, item 176, and No. 119, item 514; and of 1992, No. 75, item 367), shall cease to have effect except that the provisions of chapters 1, 4, 7 (with the exception of Article 94), 10 and 11 shall continue in force.

Article 78. This Act shall enter into force 14 days after its promulgation.[5]

CONSTITUTIONAL PROVISIONS

Continued in Force pursuant to Article 77 of the Constitutional act of 17th October, 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government repealing the Constitution of the Republic of Poland of 22nd July, 1952.

Chapter 1: The Foundations of the Political and Economic System

Article 1. The Republic of Poland is a democratic state ruled by law and implementing the principles of social justice.

Article 2. Supreme power in the Republic of Poland shall be vested in the Nation. The Nation shall exercise its power through its representatives elected to the Sejm and to the Senate. The exercise of such power may also be implemented by means of a referendum. The principles and the methods of holding a referendum shall be established by law.

5 The act entered into force on Tuesday, Dec. 8, 1992.

Article 3. Observance of the laws of the Republic of Poland shall be the fundamental duty of every organ of State. All the organs of State authority and administration shall work on the basis of compliance with the law.

Article 4. Political parties shall be formed voluntarily and shall be based upon the equality of all citizens of the Republic of Poland. Their purpose shall be to influence the formulation of the policy of the State by democratic means. The Constitutional Tribunal shall adjudicate upon the inconsistency of the aims or activities of a political party with the Constitution.

Article 5. The Republic of Poland shall guarantee the participation of local self-government in the exercise of power and freedom of activity to other forms of self-government.

Article 6. The Republic of Poland shall guarantee freedom of economic activity regardless of the type of ownership; restrictions of this freedom may be imposed only by means of statute.

Article 7. The Republic of Poland shall protect ownership and the right of succession and shall guarantee comprehensive protection of personal property. Expropriation may be allowed exclusively for public purposes and for just compensation.

Article 8. The Armed Forces of Republic of Poland shall safeguard the sovereignty and independence of the Polish Nation, its security and peace.

Articles 9 and *10* are repealed.

Chapter 4: The Constitutional Tribunal, the Tribunal of State, the Supreme Chamber of Control, the Commissioner for Citizens' Rights

Article 33a. The Constitutional Tribunal shall adjudicate upon the conformity to the Constitution of laws and other normative acts enacted by main and central State organs, and shall formulate universally binding interpretation of the laws. Judgments of the Constitutional Tribunal on the nonconformity of laws to the Constitution are subject to examination by the Sejm. Judgments of the Constitutional Tribunal on the nonconformity of other normative acts to the Constitution or laws are binding. The Constitutional Tribunal shall apply measures to remove any nonconformity. Members of the Constitutional Tribunal shall be elected by the Sejm from among persons who are distinguished in knowledge of the law. Members of the Constitutional Tribunal shall be independent and subject only to the Constitution. The jurisdiction, organization and procedure of the Constitutional Tribunal shall be determined by law.

Article 33b. The Tribunal of State shall adjudicate upon responsibility for infringements of the Constitution and laws by persons holding supreme State offices which are specified by law. The Tribunal of the State may adjudicate upon the criminal responsibility of persons who are being prosecuted for reasons specified above and for any offenses committed in connection with their office. The Tribunal of State is elected by the Sejm, from persons not being Deputies, for the period of the Sejm's term of office. The First President of the Supreme Court shall be the Chairman of the Tribunal of State. Judges of the Tribunal of State are independent and subject only to the laws. The

jurisdiction, organization and procedure of the Tribunal of State shall be determined by law.

Article 34. The Supreme Chamber of Control is appointed to control the economic, financial and organizational-administrative activities of organs of state administration, enterprises and other organizational units subordinated to such organs, from the point of view of legality, economic efficiency, efficacy and integrity. The Supreme Chamber of Control may also undertake, within the scope determined by law, control of cooperative organizations and their unions, social organizations as well as units of the non-socialized economy.

Article 35. The Supreme Chamber of Control is subordinate to the Sejm. The Supreme Chamber of Control shall present to the Sejm its comments upon the reports of the Council of Ministers concerning the implementation of the national social and economic plan as well as an assessment of the implementation of the State Budget. The Supreme Chamber of Control shall annually present to the Sejm a report upon its activities.

Article 36. The President of the Supreme Chamber of Control is appointed and recalled by the Sejm, with the consent of the Senate. The Supreme Chamber of Control acts collectively. The organization and mode of functioning of the Supreme Chamber of Control is determined by law.

Article 36a. The Commissioner for Citizens' Rights shall safeguard the observance of citizens' rights and freedoms specified in the Constitution and other legal provisions. The Commissioner for Citizens' Rights shall be appointed by the Sejm, with the consent of the Senate, for a four-year term of office. The mode of functioning of the Commissioner for Citizens' Rights shall be determined by law.

Article 36b. The National Council of Radio and Television shall safeguard the observance of the freedom of speech, the citizen's right for information and social interest in radio and television. The Members of the Council shall be appointed by the Sejm, Senate, and the President. For the purpose of implementing statutes and pursuant to authorization provided thereunder the National Council of Radio and Television shall issue resolutions and regulations. The rules of the nomination of members of the Council, the organization, and the mode of its functioning is determined by law.

Chapter 7: The Courts and System of Public Prosecution

Article 56. The administration of justice in the Republic of Poland shall be carried out by the Supreme Court, the common courts and special courts. Boards for the Adjudication of Misdemeanors shall judicially settle cases of misdemeanors. The structure, jurisdiction and procedure of the Courts and the Boards for the Adjudication of Misdemeanors shall be defined by laws.

Article 57. The Courts shall pronounce judgments in the name of the Republic of Poland.

Article 58 is repealed.

Article 59. People's lay judges shall take part in the hearing of cases and in the pro-

nouncement of judgment with the exception of instances defined by law. When adjudicating upon cases in courts, the people's lay judges shall have the same rights as professional judges. People's lay judges shall be elected. The rules and mode of election of the people's lay judges of common and special courts and their terms of office shall be defined by law.

Article 60. Judges are irremovable except in instances specified by law. The powers, composition and procedure of the National Council of the Judiciary shall be established by law.

Article 61. The Supreme Court shall be the main judicial organ and shall supervise the work of all other courts in respect of their adjudications. The mode of exercising supervision by the Supreme Court shall be defined by law. The First President of the Supreme Court shall be chosen from among the judges of the Supreme Court by the Sejm, which may recall him on the motion of the President of the Republic, but Presidents of the Supreme Court shall be appointed and may be recalled by the President of the Republic.

Article 62. Judges shall be independent and subject only to the laws.

Article 63. Cases in all courts of the Republic of Poland shall be heard in public. The law may specify exceptions to this rule. The accused shall be guaranteed the right to defense. The accused may have a defense counsel, either of his own choice, or appointed by the court.

Article 64. The Office of Public Prosecution shall safeguard observations of the law and the prosecution of offenses. The Office of Public Prosecution is subordinate to the Minister of Justice who holds the office of the Prosecutor-General. The method of appointment and recall of prosecutors as well as the principles of organization and procedure of the Office of Public Prosecution shall be defined by law.

Articles 65 and *66* are repealed.

Chapter 8: The Fundamental Rights and Duties of Citizens

Article 67. The Republic of Poland shall strengthen and extend the rights and freedoms of citizens. Citizens of the Republic of Poland shall have equal rights irrespective of sex, birth, education, profession, nationality, race, religion, social status and origin. It shall be the duty of the citizens of the Republic of Poland to conscientiously perform their duties toward the Homeland and contribute to its development.

Article 68. Citizens of the Republic of Poland shall have the right to work: that is, the right to employment paid in accordance with the quantity and quality of the work done.

Article 69. Citizens of the Republic of Poland shall have the right to rest and leisure. The right to rest and leisure shall be assured to employees: by the statutory reduction of working time through the application of the eight-hour working day, shorter working time in cases specified by law, by statutory days free from work and by annual paid holidays. The organization of holiday schemes, the development of tourism, health resorts, sports facilities, community centers, clubs, recreation rooms, parks and other

leisure-time facilities shall provide opportunities for healthy and cultural recreation to an increasing number of working people in town and country.

Article 70. Citizens of the Republic of Poland shall have the right to health protection and to assistance in the event of sickness or inability to work. This right shall be implemented to an increasing degree by:

(1) the development of social insurance to cover sickness, old age and inability to work and by the enlargement of various forms of social assistance;

(2) the development of State-organized protection of health and by the raising of health standards of the population, free medical assistance for all working people and their families, a steady improvement of safety conditions, protection and hygiene at work, extensive prevention and treatment of disease, and care for the disabled;

(3) the development of hospitals, sanatoria, outpatient clinics, medical aid centers, and sanitation facilities.

Article 71. Citizens of the Republic of Poland shall have the right to benefit from the natural environment and it shall be their duty to protect it.

Article 72. Citizens of the Republic of Poland shall have the right to education. The right to education shall be ensured to an increasing degree by:

(1) free education;

(2) universal and compulsory elementary education;

(3) universalization of secondary education;

(4) development of higher education;

(5) assistance from the State in raising the skills of citizens employed in industrial establishments and other places of employment in town and country;

(6) a scheme of State scholarships, the development of hostels, boarding schools and students' hostels, as well as other forms of material aid.

Article 73. Citizens of the Republic of Poland shall have the right to benefit from cultural achievements and to creatively participate in the development of national culture. This right shall be increasingly ensured by developing and making available to the working people of town and country: libraries, books, press, radio, cinemas, theaters, museums and exhibitions, houses of culture, clubs and recreation rooms; by comprehensively promoting and stimulating cultural creative activity by the people and developing creative talents.

Article 74. The Republic of Poland shall foster the comprehensive development of science based on the achievements of the most advanced thought of mankind and of progressive Polish thought, that is, science in the service of the Nation.

Article 75. The Republic of Poland shall concern itself with the development of literature and arts which express the needs and aspirations of the Nation, and which are in keeping with the best progressive traditions of Polish creativity.

Article 76. The Republic of Poland shall ensure comprehensive protection to the veterans of struggles for national and social liberation.

Article 77. The Republic of Poland shall extend special protection to the creative intelligentsia, that is, to those working in the field of science, education, literature and art, as well as to pioneers of technological progress, rationalizers and inventors.

Article 78. Women in the Republic of Poland shall have equal rights with men in all fields of public, political, economic, social and cultural life. The equality of the rights of women shall be guaranteed by:

(1) equal rights with men to work and to be paid according to the principle "equal pay for equal work," the right to rest and leisure, to social insurance, to education, to honors and decorations, and to hold public offices;

(2) mother-and-child care, protection of expectant mothers, paid leave before and after confinement, the development of a network of maternity clinics, creches and nursery schools, the extension of a network of service establishments and canteens.

The Republic of Poland shall strengthen the position of women in society, especially of gainfully employed mothers and women.

Article 79. Marriage, motherhood and family shall be safeguarded and protected by the Republic of Poland. The State shall extend special protection to families with many children. It shall be the parents' duty to bring up their children to become law-abiding citizens who are aware of their duties as citizens of the Republic of Poland. The Republic of Poland shall ensure the implementation of rights and obligations in respect of alimony. Children born without marriage shall have rights equal to those born within marriage. The Republic of Poland, being mindful of the interests of the family, shall strive to improve housing conditions, and, in cooperation with citizens, shall develop and promote various forms of residential construction, especially those promoted by cooperative societies, and shall show care in the proper management of housing resources.

Article 80. The Republic of Poland shall devote special attention to the education of youth and shall ensure it substantial opportunities for development and provide conditions for active participation of the younger generation in public, political, economic and cultural life, encouraging awareness in young people of their joint responsibility for the development of the Homeland.

Article 81. Citizens of the Republic of Poland, irrespective of nationality, race or religion, shall enjoy equal rights in all fields of public, political, economic, social and cultural life. Infringement of this principle by any direct or indirect privileges or restrictions or rights by reference to nationality, race or religion shall be punishable. The spreading of hatred or contempt, the provocation of discord, or humiliation of man on account of national, racial or religious differences, shall be prohibited.

Article 82. The Republic of Poland shall guarantee freedom of conscience and religion to its citizens. The Church and other religious organizations shall freely exercise their religious functions. Citizens shall not be prevented from taking part in religious activities and rites. No one may be compelled to participate in religious activities or rites. The church shall be separate from the State. The principles of the relationship between State and Church and the legal and property rights of religious organizations shall be defined by laws.

Article 83. The Republic of Poland shall guarantee its citizens freedom of speech, of the press, of assembly and gatherings, of processions and demonstrations.

Article 84. In order to promote political, social, economic and cultural activities, the

Republic of Poland shall guarantee the right of association to its citizens. Political organizations, trade unions, associations of working peasants, cooperative associations, youth and women's associations, sports and defense organizations, cultural, technical and scientific societies, as well as other social organizations—shall associate citizens in active participation in political, social, economic and cultural life. It shall be prohibited to set up and to participate in associations whose objective or activities threaten the social and political system or the legal order of the Republic of Poland.

Article 85. Trade unions shall play an important public function in the Republic of Poland as mass organizations which take part in the formulation and implementation of tasks of social and economic advancement of the country; the trade unions shall represent the interests and rights of working people, and shall be a school of civic activity and involvement in the creation of civic society.

Article 86. Citizens of the Republic of Poland shall participate in exercising social control, in consultations and discussions upon import issues concerning the development of the country, and may submit their suggestions. Citizens shall have the right to approach all organs of the State with complaints and grievances. Appeals, complaints and grievances of citizens shall be examined and settled without delay and justly. Those guilty of delay or an indifferent and bureaucratic attitude shall be held accountable.

Article 87. The Republic of Poland shall guarantee to its citizens the inviolability of the person. A citizen may be deprived of his freedom only in cases specified by law. A detained person shall be set free unless a warrant of arrest issued by a court or by a prosecutor has been served on him within forty-eight hours beginning with the moment of his detention. The inviolability of the home and the privacy of correspondence shall be protected by law. The home may be searched only in cases specified by law. Property may be confiscated only in cases specified by law, and only by virtue of a final judgment of a court.

Article 88. The citizens of other states and stateless persons may be granted asylum on the basis of principles specified by law.

Article 89. Polish citizens staying abroad shall enjoy the protection of the Republic of Poland.

Article 90. It shall be the duty of a citizen of the Republic of Poland to abide by the provisions of the Constitution and laws, to respect the principles of community life, and diligently discharge his duties toward the State.

Article 91. It shall be the duty of every citizen of the Republic of Poland to safeguard public ownership and to strengthen it as the firm foundation of the State's development and a source of the wealth and power of the Homeland.

Article 92. It shall be the sacred duty of every citizen to defend the Homeland. Military service shall be an honorable patriotic duty of citizens of the Republic of Poland.

Article 93. It shall be the duty of every citizen of the Republic of Poland to exercise vigilance against enemies of the Nation and carefully guard State secrets. High treason, that is, espionage, subversion of the Armed Forces, desertion to the enemy, shall be punished as the gravest of crimes and with the full severity of the law.

Chapter 9: The Principles of Elections to the Sejm, to the Senate and to the Presidency

Article 94 is repealed.

Article 95. Every citizen who has attained the age of eighteen years irrespective of sex, nationality and race, religion, education, length of residence, social origin, profession or financial status shall have the right to vote.

Article 96. Every citizen who has attained the age of twenty-one years shall be qualified to be elected to the Sejm and Senate, provided he has been permanently resident on the territory of the Republic of Poland for a period of at least 5 years.

Article 97. Women shall possess all electoral rights on equal terms with men.

Article 98. Citizens serving in the Army shall possess all electoral rights on equal terms with civilians.

Article 99. Electoral rights shall be denied to persons pronounced incapable of legal actions by a final decision of a court given on the grounds of mental illness or mental deficiency and denied also to persons who are deprived of public or electoral rights by a final decision of a court.

Article 100. Candidates to the Sejm, to the Senate and for the Presidency shall be nominated by political and social organizations and the electorate.

Article 101. It shall be the duty of Deputies of the Sejm and of Senators to report to their electors on their work and on the activity of the body to which they have been elected.

Article 102. The procedure for the nomination of candidates and for holding elections of Deputies, Senators and President shall be defined by laws.

Chapter 10: The Coat-of-Arms, Colors, National Anthem and Capital of the Republic of Poland

Article 103. The image of a crowned white eagle upon a red field shall be the coat-of-arms of the Republic of Poland. White and red shall be the colors of the Republic of Poland. "Dabrowski's Mazurka" shall be the national anthem of the Republic of Poland. Details shall be specified by law.

Article 104. The coat-of-arms, colors and national anthem of the Republic of Poland shall enjoy respect and be objects of special protection.

Article 105. Warsaw, a city which embodies the heroic traditions of the Polish Nation, shall be the capital of the Republic of Poland.

Chapter 11: Procedure for Amending the Constitution

Article 106. The Constitution may be amended only by a law passed by the Sejm of the Republic of Poland by a majority of at least two-thirds of the votes requiring the presence of at least half of the total number of Deputies.

CONSTITUTION OF ROMANIA

(Adopted November 21, 1991)

Title I. General Principles

Article 1—The Romanian State. Romania is a national state, sovereign and independent, unitary and indivisible. The form of government of the Romanian state is the republic. Romania is a social and democratic state of law in which human dignity, the rights and liberties of citizens, the free development of the human personality, justice, and political pluralism represent supreme values and are guaranteed.

Article 2—Sovereignty. National sovereignty belongs to the Romanian people who exercise it through their representative bodies and through referendums. No group or individual may exercise sovereignty on his own behalf.

Article 3—The Territory. The territory of Romania is inalienable. The borders of the country are sanctioned by statutory law, observing the principles and other generally acknowledged norms of international law. Administratively, the territory is organized in communes, cities, and counties. According to the law, some cities are proclaimed municipalities. Foreign populations may not be displaced or colonized on the territory of the Romanian state.

Article 4—The Unity of the People and Equality Among Citizens. The state is based on the unity of the Romanian people. Romania is the common and indivisible homeland of all its citizens regardless of race, ethnic origin, language, religion, sex, opinion, political allegiance, wealth, or social origin.

Article 5—Citizenship. Romanian citizenship may be acquired, preserved, and lost under the conditions stipulated by the organic law. Romanian citizenship cannot be taken away from anyone who acquired it at birth.

Article 6—The Right to Identity. The state recognizes and guarantees for members of the national minorities the right to preserve, develop, and express their ethnic, cultural, linguistic, and religious identity. The protective measures taken by the state to preserve, develop, and express the identity of the members of the national minorities shall be in accordance with the principles of equality and nondiscrimination in relation to the other Romanian citizens.

Article 7—Romanians Abroad. The state supports the strengthening of links with Romanians outside the country's borders and works for the preservation, development,

and expression of their ethnic, cultural, linguistic, and religious identity, by respecting the legislation of the state of which they are citizens.

Article 8—Pluralism and Political Parties. Pluralism is a condition and a guarantee of constitutional democracy in Romanian society. Political parties are established and carry out their activity under the conditions of the law. They contribute to the definition and expression of the citizens' political will, respecting national sovereignty, territorial integrity, the rule of law, and the principles of democracy.

Article 9—Trade Unions. Trade unions are set up and carry out their activity according to their statutes under the conditions of the law. They contribute to the protection of the rights and the promotion of the professional, economic, and social interests of employees.

Article 10—International Relations. Romania maintains and develops peaceful relations with all states and, in this framework, relations of good neighborliness based on the principles and on the other generally accepted norms of international law.

Article 11—International Law and Domestic Law. The Romanian state pledges to fulfill, to the letter and in good faith, its commitments under the treaties to which it is a party. The treaties ratified by Parliament, according to the law, are part of domestic law.

Article 12—National Emblems. Romania's flag is tricolor; it consists of three vertical stripes: blue, yellow, and red, in this order, from the mast. The national day of Romania is 1 December. The national anthem of Romania is "Romanians, Awake." The coat of arms of the country and the state seal are established by statutory laws.

Article 13—Official Language. In Romania, the official language is Romanian.

Article 14—The Capital. The capital of Romania is Bucharest municipality.

Title II. Fundamental Rights, Freedoms, and Duties

Chapter I. Common Provisions

Article 15—Universality. The citizens enjoy the rights and freedoms granted to them by the Constitution and other laws and have the duties stipulated by them. The law provides only for the future, with the exception of a more favorable penal law.

Article 16—Equality of Rights. Citizens are equal before the law and before public authorities, with no privileges and with no discrimination. No one is above the law. Public, civil, or military offices and posts can be occupied only by persons with Romanian citizenship and residence in the country.

Article 17—Romania Citizens Abroad. Romanian citizens abroad shall enjoy the protection of the Romanian state and shall fulfill their duties with the exception of those which are incompatible with their absence from the country.

Article 18—Aliens and Stateless Persons. Aliens and stateless persons residing in Romania shall enjoy the general protection of persons and property guaranteed by the Constitution and other laws. The right to asylum is granted and withdrawn under conditions of the law, observing the international conventions and treaties to which Romania is a party.

Article 19—Extradition and Expulsion. A Romanian citizen may not be extradited or expelled from Romania. Aliens and stateless persons may be extradited only on the basis of an international convention or under conditions of reciprocity. Expulsion and extradition shall be decided upon by the organs of justice.

Article 20—International Human Rights Treaties. Constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration on Human Rights and with other treaties and pacts to which Romania is a party. If there is disagreement between the pacts and treaties on fundamental human rights to which Romania is a party and domestic laws, then international regulations will have priority.

Article 21—Free Access to Justice. Any person may appeal to the organs of justice for the protection of his legitimate rights, freedoms, and interests. No law can hamper the exercise of this right.

Chapter II. Fundamental Rights and Freedoms

Article 22—The Right to Life and to Physical and Mental Well-Being. A person's right to life and to physical and mental well-being are guaranteed. No one shall be subjected to torture or to any kind of inhuman or degrading punishment or treatment. Capital punishment is prohibited.

Article 23—Individual Freedom. Individual freedom and personal security are inviolable. The searching, detention, or arrest of a person is allowed only in cases specified by law and according to the procedure specified by law. The period of detention may not exceed 24 hours. A person may be arrested only on the basis of a warrant issued by a magistrate for a maximum of 30 days. The person arrested can file an appeal about the legality of the warrant to the judge who is obliged to make a pronouncement, stating the grounds for his decision. The extension of the arrest period is approved only by a court of law. The person detained or arrested shall be promptly informed, in the language which he understands, of the reasons for his detention or arrest and of the charges against him, as soon as possible; he will be informed of the charges only in the presence of a counsel chosen by him or appointed by the judge. The person detained or arrested must be released if the grounds for these measures cease to exist. A person under preventive arrest has the right to ask for provisional release, subject to judicial monitoring or on bail. A person is considered innocent until the final pronouncement of the sentence. Punishment can be set or applied only under the conditions of the law and on the basis of the law.

Article 24—The Right to Defense Counsel. The right to defense counsel is guaranteed. Throughout the trial, the parties have the right to be assisted by a chosen or court-appointed counsel.

Article 25—Free Movement. The right to free movement in the country and abroad is guaranteed. The law sets the conditions for the exercise of this right. Every citizen is assured of the right to establish his domicile or residence anywhere in the country, to emigrate, as well as to return to the country.

Article 26—Private and Family Life. Public authorities shall respect and protect private

and family life. An individual has the right to do what he wants to do, as long as he does not violate the rights and freedoms of other persons, public order, and moral standards.

Article 27—Inviolability of Domicile. The domicile and the residence are inviolable. No one may enter or stay in the domicile or residence of a person without the latter's consent. Exceptions from the provisions noted here can be allowed, according to the law, in the following situations:

(a) to serve an arrest warrant or a court decision;

(b) to remove any threat to the life, physical well-being, or property of a person;

(c) to defend national security or public order;

(d) to prevent the spread of an epidemic;

Searches may be ordered only by a magistrate and may be carried out only in accordance with the forms stipulated by law. Night searches are prohibited except in cases of in flagrante delicto.

Article 28—Confidentiality of Correspondence. The confidentiality of letters, cables, and other mail, and of telephone conversations and other means of communication is inviolable.

Article 29—Freedom of Conscience. Freedom of thought and opinion, as well as the freedom of religious belief, may not be restricted in any way. No one can be forced to adopt an opinion or to espouse a religious belief contrary to his convictions. Freedom of conscience is guaranteed; it must be expressed in a spirit of tolerance and mutual respect. The religious sects are free and are organized in accordance with their own statutes, under the conditions of the law. In relations among the sects, all forms, means, acts, or actions of religious feuding are prohibited. The religious sects are autonomous in relation to the state and they enjoy its support, which includes facilitating a religious presence in the Army, in hospitals, penitentiaries, asylums, and orphanages. Parents or guardians have the right to ensure, in accordance with their own convictions, the education of minor children for whom they are responsible.

Article 30—Freedom of Expression. The freedom to express ideas, opinions, and beliefs, and the freedom of creation of any kind—orally, in writing, through images, by means of sound, or by any other means of public communication—are inviolable. Censorship of any kind is prohibited. Freedom of the press also implies the freedom to establish publications. No publication may be banned. The law can compel the mass media organs to make public their sources of financing. Freedom of expression cannot be used to damage the dignity, honor, or private life of an individual or his right to his own image. The law prohibits defamation of the country and the nation; provocation to war or aggression, and to ethnic, racial, class, or religious hatred; incitement to discrimination, territorial separatism, or public violence; and obscene acts, contrary to good morals. The civil responsibility for the information or creation made public will be borne by the editor or the producer, author, or organizer of an artistic show, by the owner of the means of reproduction, the radio station, or the television station, under the conditions of the law. Violations by the press will be specified by law.

Article 31—The Right to Information. A person's right to have access to any information

of public interest cannot be curtailed. In accordance with their competencies, public authorities must ensure that citizens receive correct information concerning public affairs and matters of personal interest. The right to receive information must not jeopardize measures to protect the young or national security. The public and private mass media organs must ensure that public opinion receives correct information. The public services of radio and television are autonomous. They must guarantee that significant social and political groups have the right to broadcast. The organization of these services and the monitoring of their activity by Parliament are regulated by statutory law.

Article 32—The Right to Education. The right to education is ensured through compulsory general education, high school and vocational education, higher education, and other forms of instruction and advanced training. The language of instruction, on all levels, is the Romanian language. Under the conditions of the law, an international language can also be the language of instruction. The right of members of ethnic minorities to learn their mother tongue and the right to be taught in this language are guaranteed; the means of exercising these rights are stipulated by law. State education is free, according to the law. Educational institutions, including private institutions, are established and carry out their activity in accordance with the law. The autonomy of universities is guaranteed. The state will ensure freedom of religious education in accordance with the specific requirements of each faith. In the state schools, religious education is organized and guaranteed by law.

Article 33—The Right to Health Care. The right to health care is guaranteed. The state is obliged to take measures to ensure hygiene and public health. The organization of medical assistance and the social insurance system for illness, accidents, childbirth, and recovery, the supervision of the exercise of the medical professions and of paramedical activity, as well as other measures for the protection of the individual's physical and mental health are stipulated in accordance with the law.

Article 34—The Right to Vote. Citizens who are 18 years of age or older as of election day have the right to vote. Retarded or mentally disturbed persons deprived of the right to vote, as well as persons sentenced by final judicial decision to the loss of voting rights, do not have the right to vote.

Article 35—The Right to Be Elected. Citizens entitled to vote, who fulfill the conditions specified in Article 16, paragraph 3, have the right to be elected, unless they are prohibited from forming political parties on the basis of Article 37, sentence 3. The candidates must be at least 23 years of age by or on election day to be elected to the Chamber of Deputies or to local bodies and at least 35 years of age to be elected to the Senate or to the office of president of Romania.

Article 36—Freedom of Assembly. Meetings, demonstrations, parades, or any other form of assembly are free and may be organized and held only in a peaceful manner, without any kind of weapons.

Article 37—The Right to Associate. Citizens may freely associate in political parties, trade unions, and other forms of association. Parties or organizations which by their objectives or activities militate against political pluralism, the principles of the state of

law, or the sovereignty, integrity, or independence of Romania, are unconstitutional. Judges of the Constitutional Court, people's defenders, magistrates, active members of the Armed Forces, policemen, and other categories of public employees stipulated by statutory law may not belong to political parties. Associations of a secret nature are prohibited.

Article 38—Labor and the Social Protection of Labor. The right to work cannot be restricted. Professions and jobs may be freely chosen. Employees have a right to the social protection of labor. Protective measures deal with work safety and hygiene, working conditions for women and youth, the setting of a minimum wage for the economy, weekly time off, paid vacation time, work under difficult conditions, and other specific situations. On the average, the normal working day is at the most 8 hours. Women will receive the same pay as men for equal work. The right to collective bargaining and the binding nature of collective agreements are guaranteed.

Article 39—The Prohibition of Forced Labor. Forced labor is prohibited. The following do not constitute forced labor:

(a) military service or equivalent activities carried out by those who, in accordance with the law, do not perform obligatory military service because of religious reasons;

(b) work done by a person who has received a sentence, under normal conditions, during the period of detention or while on parole;

(c) work imposed in a situation created in the wake of a natural disaster or some other danger, as well as work that is included in the normal civil obligations specified by law.

Article 40—The Right to Strike. Employees have a right to strike to protect their professional, economic, and social interests. The law sets the conditions and limits for the exercise of this right as well as the guarantees required for providing essential public services.

Article 41—Protection of Private Property. The rights to own property and to have claims against the state are guaranteed. The content and limitations of these rights are stipulated by law. Private property is ensured equal protection under the law, regardless of who the owner may be. Foreigners and stateless persons cannot obtain the right to own land. No one may be dispossessed, except for a reason of public interest, specified by law, with just and prior compensation. In the case of projects of general interest, public authorities may use the basement of any building, with the obligation of compensating the owner for any damage caused to the soil, the plants, or structures, and for any other damage caused by the authorities. In the case of dispute, the compensations provided for in sentences 3 and 4 of this article will be determined by mutual agreement with the owner or by the organs of justice. The right to own property implies an obligation to comply with tasks related to environmental protection and ensuring good neighborliness and to carry out other duties which, by law or tradition, are incumbent upon the property owner. Legally acquired property cannot be confiscated. Property is presumed to have been acquired legally. Items intended for, used for, or resulting from the committing of an infraction or contravention can be confiscated only under the conditions of the law.

Article 42—The Right to Inherit. The right to inherit is guaranteed.

Article 43—The Standard of Living. The state is obliged to take measures for economic

development and social protection which will ensure that citizens will have a decent standard of living. Citizens have the right to a pension, paid maternity leave, medical care in state health units, unemployment aid, and other forms of social assistance provided by law.

Article 44—The Family. The family is based on a marriage which is freely consented to by the spouses, on their equality, and on the right and duty of parents to raise, educate, and instruct their children. The conditions in which marriages may be contracted, dissolved, and annulled are stipulated by law. A religious marriage ceremony can be celebrated only after the civil ceremony. Children born out of wedlock are equal before the law to those born in wedlock.

Article 45—Protection of Children and Youth. Children and youth will enjoy special protection and assistance in realizing their rights. The state will give state allocations for children and aid for the care of sick or handicapped children. Other forms of social protection of children and youth will be determined by law. The exploitation of minors and their use in activities which would be harmful to their health or morals or which would endanger their life or normal development are prohibited. Minors under the age of 15 cannot be hired as employees. Public authorities must contribute to ensuring conditions for the free participation of the youth in the political, social, economic, cultural, and sports life of the country.

Article 46—Protection of the Handicapped. The handicapped will enjoy special protection. The state will ensure the implementation of a national policy of prevention, treatment, rehabilitation, education, training, and social integration of the handicapped, respecting the rights and duties of parents and guardians.

Article 47—The Right to Petition. Citizens have the right to address petitions to public authorities solely in the name of the signers of the petitions. Legally constituted organizations have the right to petition exclusively in the name of the collectives which they represent. The exercise of the right to petition is exempt from tax. Public authorities have the obligation to respond to petitions by the deadlines and under the conditions specified by law.

Article 48—The Rights of Persons Suffering Damage at the Hands of Public Authority. A person who has suffered damage as a result of the violation of one of his rights by a public authority, through an administrative act, or as a result of the failure to have a request resolved by the legal deadline, is entitled to have the right in question recognized and the act revoked and to receive compensation for the damages. The conditions and limitations for the exercise of this right will be determined by statutory law. The state is materially responsible, according to the law, for the damages caused by judicial errors occurring in penal trials.

Article 49—Restrictions on the Exercise of Certain Rights or Freedoms. The exercise of certain rights or freedoms may be restricted only by law and only if this is necessary, according to the case, in order to: defend national security, public order, health, or public morals, or the rights and freedoms of citizens; investigate a crime; prevent the consequences of a natural disaster or a particularly severe catastrophe. The restriction must be in proportion to the situation which caused it and it may not impinge on the existence of justice or freedom.

Chapter III. Basic Duties

Article 50—Loyalty to the Country. Loyalty to the country is a sacred duty. Citizens entrusted with public functions and military men are responsible for faithfully fulfilling their duties and, for this purpose, they will take the oath required by law.

Article 51—Observance of the Constitution and the Laws. The respecting of the Constitution, its supremacy, and its laws is obligatory.

Article 52—The Defense of the Country. Citizens have the right and obligation to defend Romania. Military service is compulsory for male Romanian citizens who have reached the age of 20, with the exception of cases defined by law. Citizens up to the age of 35 can be called up for training for active military service.

Article 53—Financial Contributions. Citizens are under obligation to make contributions for public expenditures by means of fees and taxes. The legal taxation system must ensure a just distribution of fiscal duties. Any other levies are prohibited, aside from those stipulated by law for exceptional situations.

Article 54—The Exercise of Rights and Freedoms. Romanian citizens, foreign citizens, and stateless persons must exercise their constitutional rights and freedoms in good faith, without violating the rights and freedoms of others.

Chapter IV. The People's Attorney

Article 55—Appointment and Role. The People's Attorney is appointed by the Senate for a four-year term, for the purpose of defending the rights and freedoms of the citizens. The organization and operation of the institution of the People's Attorney are established by statutory law. The People's Attorney cannot perform any other public or private function.

Article 56—Discharging Duties. The People's Attorney will discharge his duties ex officio or at the request of persons whose rights and freedoms have been violated, within the limits set by law. Public authorities are under obligation to provide the necessary support to the People's Attorney in the exercise of his duties.

Article 57—Reporting to Parliament. The People's Attorney reports to the two chambers of Parliament annually or at their request. The reports may contain recommendations concerning the legislation or measures of another nature designed to protect the rights and freedoms of the citizens.

Title III. Public Authorities

Chapter I. Parliament

Section 1. Organization and Operation

Article 58—Role and Structure The Parliament is the highest representative body of the Romanian people and the sole legislative authority in the country. The Parliament is made up of the Chamber of Deputies and the Senate.

Article 59—Election of the Chambers. The Chamber of Deputies and the Senate are elected by universal, equal, direct, secret, and freely expressed vote, in accordance with the election law. Organizations of citizens belonging to national minorities that do not win in the elections the necessary number of votes to be represented in Parliament, each have the right to one deputy seat, in accordance with the election law. Citizens of an ethnic minority may be represented by only one organization. The number of deputies and senators is set by the election law on the basis of the population of the country.

Article 60—Term in Office. The Chamber of Deputies and the Senate are elected for a term of four years, which can be extended by statutory law in case of war or disaster. Elections for the Chamber of Deputies and the Senate are held no later than three months after the expiration of their term or the dissolution of the Parliament. The newly elected Parliament will be convened by the president of Romania no later than 20 days after election day. The term of the chambers is extended up to the date of the legal assembly of the new Parliament. During this period the Constitution cannot be revised and no statutory laws can be adopted, amended, or repealed. Draft laws or legislative proposals on the agenda of the preceding Parliament will be handled by the new Parliament.

Article 61—Internal Organization. The organization and operation of each chamber are determined by their own bylaws. The financial resources of the chambers are specified in the budgets approved by them. Each chamber elects its permanent bureau. The president of the Chamber of Deputies and the president of the Senate are elected for the duration of the term of the chambers. The other members of the permanent bureaus are elected at the beginning of each session. The members of the permanent bureaus can be recalled before the term expires. The deputies and senators can organize in parliamentary groups in accordance with the bylaws of each chamber. Each chamber forms its own permanent commissions and can set up investigative commissions or other special commissions. The chambers can set up their own joint commissions. The permanent bureaus and the parliamentary commissions are formed in accordance with the political configuration of each chamber.

Article 62—Joint Sessions. The Chamber of Deputies and the Senate will meet in separate sessions and in joint sessions. In joint sessions, the proceedings will take place on the basis of a regulation adopted by the vote of the majority of the deputies and senators. The chambers will meet in joint session to:

(a) receive the message of the president of Romania;

(b) approve the state budget and the state social security budget;

(c) declare general or partial mobilization;

(d) declare a state of war;

(e) suspend or cease military hostilities;

(f) examine the reports of the Supreme Council for the Defense of the Country and the Court of Accounts;

(g) appoint, on the recommendation of the president of Romania, the director of the Romanian Intelligence Service and monitor the activity of this service;

(h) discharge other duties which, in accordance with the Constitution or the bylaws, are executed in joint session.

Article 63—Sessions. The Chamber of Deputies and the Senate will meet in two regular sessions a year. The first session begins in February and cannot extend beyond the end of June. The second session begins in September and cannot extend beyond the end of December. The Chamber of Deputies and the Senate will also meet in extraordinary sessions, at the request of the president of Romania, the permanent bureau of each chamber, or at least one-third of the deputies or senators. The chambers will be convened by their presidents.

Article 64—Juridical Acts and Legal Quorum. The Chamber of Deputies and the Senate adopt laws, decisions, and motions in the presence of a majority of the members.

Article 65—The Public Nature of the Sessions. The sessions of the two chambers are public. The chambers can decide to hold certain sessions in camera.

Section 2. The Status of Deputies and Senators

Article 66—The Representative Mandate. The deputies and senators are at the service of the people in exercising their mandate. Any imperative mandate is null.

Article 67—The Mandate of Deputies and Senators. The deputies and senators begin to exercise their mandate on the date of the legal convening of the chamber of which they are members, provided that they are validated. The status of deputy or senator ceases on the date of the convening of the newly elected chambers or as a result of resignation, loss of voting rights, incompatibility, or death.

Article 68—Incompatibilities. No one can be both a deputy and a senator at the same time. The status of deputy or senator is incompatible with the exercise of any public position of authority, with the exception of that member of the government. Other cases of incompatibility are defined by statutory law.

Article 69—Parliamentary Immunity. A deputy or senator cannot be detained, arrested, searched, or charged with a penal offense or contravention without the consent of the chamber to which he belongs, after giving him a hearing. The competence for the judgment rests with the Supreme Court of Justice. In the case of a capital crime, the deputy or the senator can be detained and searched. The Ministry of Justice will immediately inform the president of the chamber about the detention and search. If the chamber notified finds that there are no grounds for the detention, it will order the immediate revocation of this measure.

Article 70—Independence of Opinions. Deputies and senators cannot be held legally responsible for their votes or for the political views expressed in the exercise of their mandate.

Article 71—Compensation and Other Rights. Deputies and senators receive a monthly compensation. The amount of the compensation and other rights are stipulated by law.

Section 3. Legislation

Article 72—Categories of Laws. Parliament adopts constitutional laws, statutory laws, and ordinary laws. Constitutional laws are for the purpose of revising the Constitution. The following are regulated by statutory laws:

(a) the electoral system;
(b) the organization and operation of the political parties;
(c) the organization and holding of a referendum;
(d) the organization of the government and of the Supreme Council for the Defense of the Country;
(e) martial law and emergency regulations;
(f) violations of the law, punishments, and the execution of punishments;
(g) the granting of amnesty or collective pardon;
(h) the organization and operation of the Higher Council of Magistrates, courts of law, the Public Ministry, and the Court of Accounts;
(i) the status of public functionaries;
(j) administrative litigation;
(k) the general juridical system of ownership and inheritance;
(l) the general system of labor relations, trade unions, and social aid;
(m) the general organization of education;
(n) the general operation of religious denominations;
(o) the organization of the local and countrywide administrations, as well as the general system of local autonomy;
(p) the manner of determining exclusive economic zones;
(r) [there is no letter "q"] other areas in regard to which the Constitution calls for the adoption of statutory laws.

Article 73—Legislative Initiative. Legislative initiative can be taken by the government, the deputies, and the senators, as well as at least 250,000 citizens with the right to vote. A legislative initiative from citizens must represent at least one-quarter of the counties of the country, and at least 10,000 signatures in support of this initiative must be obtained in each of these counties or in Bucharest Municipality. Fiscal matters, international issues, amnesty, or pardon cannot be the object of a legislative initiative from citizens. The government exercises its legislative initiative by sending draft laws to one of the chambers. Deputies, senators, and citizens who exercise the right to take legislative initiative can present legislative proposals only in the form required for draft laws. Legislative proposals are submitted for approval, first of all, to the chamber in which they were presented.

Article 74—Approval of Laws and Decisions. Statutory laws and decisions regarding the regulations of the chambers are approved by majority vote of the members of each chamber. Ordinary laws and decisions are approved by majority vote of the members present in each chamber. At the request of the government or on its own initiative, the Parliament can pass draft laws or legislative proposals on an emergency basis, as stipulated in the bylaws of each chamber.

Article 75—Sending Draft Laws and Legislative Proposals from One Chamber to Another. Draft laws or legislative proposals passed by one of the chambers will be sent to the other chamber of Parliament. If the latter rejects the draft law or legislative proposals, they will be sent to the chamber which approved them for a second debate. A second rejection is final.

Article 76—Mediation. If one of the chambers passes a draft law or a legislative pro-

posal in a version which is different from the one approved by the other chamber, the presidents of the chambers will initiate a mediation procedure through the intermediary of a joint commission with equal representation of both sides. If the commission does not reach an agreement or if one of the chambers does not approve the report of the mediation commission, the disputed texts will be submitted for discussion to the Chamber of Deputies and the Senate, in joint session, which will approve the final text by majority vote as stipulated in Article 74, sentences 1 and 2.

Article 77—Promulgation of a Law. Laws are sent to the president of Romania for promulgation. The promulgation of the law takes place no later than 20 days after it is received. Before promulgating the law, the president can ask Parliament, only once, to reexamine the law. If the president has requested a reexamination of the law or if he has asked that its constitutionality be verified, the promulgation of the law takes place no later than 10 days after the receipt of the law approved after reexamination or after the receipt of the decision of the Constitutional Court which confirmed its constitutionality.

Article 78—Enactment of Laws. Laws are published in *Monitoruil Oficial Al Romaniel* and go into effect on the date of publication or on the date specified in their text.

Article 79—The Legislative Council. The Legislative Council is a specialized consultative organ of Parliament which advises on draft normative acts with a view to the systematization, unification, and coordination of the entire legislation. It keeps the official records of the legislation of Romania. The establishment, organization, and operation of the Legislative Council are stipulated by statutory law.

Chapter II. The President of Romania

Article 80—The Role of the President. The president of Romania represents the Romanian state and is the guarantor of the country's national independence, unity, and territorial integrity. The president of Romania ensures the observance of the Constitution and the normal operation of public authorities. For this purpose, the president acts as a mediator between the powers of the state as well as between the state and society.

Article 81—Election of the President. The president of Romania is elected by universal, equal, direct, secret, and freely expressed vote. The candidate who receives a majority of the votes of the voters registered on the voting lists in the first round of voting is declared to be elected. If none of the candidates receives a majority, there is a runoff between the two candidates who received the most votes in the first round. The candidate who gets the most votes is declared to be elected. No one can serve as president of Romania for more than two terms. These terms can be successive.

Article 82—Mandate Validation and Oath Taking. The results of the elections for the position of president of Romania are validated by the Constitutional Court. The candidate whose election has been validated will take the following oath before the Chamber of Deputies and the Senate, in joint session: "I swear that I will dedicate all my strength and abilities to the spiritual and material development of the Romanian people, that I will respect the Constitution and the laws of the country, and that I will

defend democracy, the fundamental rights and freedoms of citizens, and the sovereignty, independence, unity, and territorial integrity of Romania. So help me God!"

Article 83—Term in Office. The term of the president of Romania is for four years and it begins on the day that he is sworn in. The president of Romania will remain in office until the newly elected president is sworn in. The president's term in office can be extended, by statutory law, in the case of war or disaster.

Article 84—Incompatibilities and Immunities. During his term, the president of Romania cannot be a member of a party and is not allowed to have any other public or private position. The president of Romania enjoys immunity. The provisions of Article 70 are applied in an appropriate manner. The Chamber of Deputies and the Senate, in joint session, can decide to accuse the president of Romania with high treason by a vote of at least two-thirds of the deputies and senators. The Supreme Court of Justice has the competence to judge the case, under the conditions of the law. The president is discharged by law on the date that the conviction becomes final.

Article 85—Appointing the Government. The president of Romania designates a candidate for the post of prime minister and appoints the government on the basis of a vote of confidence from Parliament. In the case of a governmental reorganization or if a post becomes vacant, the president dismisses and appoints some members of the government upon the recommendation of the prime minister.

Article 86—Consulting the Government. The president of Romania can consult the government on urgent and particularly important issues.

Article 87—Participating in Sessions of the Government. The president of Romania can participate in sessions of the government during which issues of national interest concerning foreign policy, national defense, and public order are discussed and in other situations, at the request of the prime minister. The president of Romania presides over the government sessions in which he participates.

Article 88—Messages. The president of Romania will send messages to Parliament on major political problems of the nation.

Article 89—Dissolving Parliament. After consulting the presidents of the two chambers and the leaders of the parliamentary groups, the president of Romania can dissolve Parliament if Parliament does not give a vote of confidence for the formation of the government within 60 days of the first request, but only after the rejection of at least two requests for investiture. Parliament can be dissolved only once in the course of a year. Parliament cannot be dissolved during the last six months of the term of the president of Romania or during martial law or a state of emergency.

Article 90—Referendum. The president of Romania, after consulting Parliament, can ask the people to express their will in regard to matters of national interest, by means of referendum.

Article 91—Powers in the Area of Foreign Policy. On behalf of Romania, the president signs international treaties which are negotiated by the government and submits them to Parliament for ratification within 60 days. On the recommendation of the government, the president accredits and recalls the diplomatic representatives of Romania and approves the establishment, closing or change in the level of diplomatic missions.

Diplomatic representatives of other states present their letters of accreditation to the president of Romania.

Article 92—Powers in the Area of Defense. The president of Romania is the commander of the Armed Forces and holds the position of chairman of the Supreme Defense Council of the Country. With the prior approval of Parliament, he can declare partial or general mobilization of the Armed Forces. In exceptional cases, the president's decision can be submitted to Parliament for approval afterward, no later than five days after he makes it. In the case of armed aggression directed against the country, the president of Romania takes measures to repel the aggression and to inform Parliament immediately, by means of a message. If Parliament is not in session, it will be convened by law within 24 hours of the onset of the aggression.

Article 93—Exceptional Measures. In accordance with the law, the president of Romania can declare martial law or a state of emergency throughout the country or in certain localities, and he asks Parliament to consent to the measure adopted within five days, at the most, after it is taken. If Parliament is not in session, it will be convened by law no later than 48 hours after the declaration of martial law or a state of emergency and will remain in session throughout these periods.

Article 94—Other Powers. The president of Romania also has the following powers:

(a) he awards decorations and honorary titles;

(b) he awards the ranks of marshal, general, and admiral;

(c) he makes appointments to public positions under the conditions specified by the law;

(d) he grants individual pardons.

Article 95—Suspension from Office. If the president of Romania commits serious offenses which violate provisions of the Constitution, he can be suspended from office by the Chamber of Deputies and the Senate, in joint session, by majority vote of the deputies and senators, after consultations with the Constitutional Court. The president can give Parliament explanations in regard to the actions with which he is charged. The proposal for suspension from office can be initiated by at least one-third of the deputies and senators and is brought to the attention of the president immediately. If the proposal for suspension from office is approved, a referendum on the removal of the president is organized within 30 days, at the most.

Article 96—Vacancy in the Office. The office of president of Romania becomes vacant in the case of resignation, discharge from office, permanent inability to discharge the duties of the office, or death. Within three months of the date on which the vacancy of the position of president of Romania occurred, the government will organize elections for a new president.

Article 97—The Interim Period. If the office of president becomes vacant, if the president is suspended from office, or if he is temporarily unable to discharge his duties, the office will be filled in the interim by the president of the Senate or the president of the Chamber of Deputies, in that order. The powers stipulated in Articles 88–90 cannot be exercised during the interim period of the presidential office.

Article 98—Accountability of the Interim President. If the person who serves as president

of Romania ad interim commits serious offenses which violate the provisions of the Constitution, Article 95 and Article 97 will be applied.

Article 99—Acts of the President. In the exercise of his powers, the president of Romania issues decrees which are published in *Monitoruil Oficial al Romaniel.* Failure to publish makes the decree void. Decrees issued by the president of Romania in the exercise of his powers listed in Article 91, sentences 1 and 2, Article 92, sentences 2 and 3, Article 93, sentence 1, and Article 94, items (a), (b), and (d) will be countersigned by the prime minister.

Article 100—Remuneration and Other Rights. The remuneration and other rights of the president of Romania are specified by law.

Chapter III. The Government

Article 101—Role and Structure. In accordance with its program for governing approved by Parliament, the government ensures the implementation of the domestic and foreign policy of the country and exercises the general management of the public administration. In the exercise of its powers, the government cooperates with the social bodies concerned. The government consists of a prime minister, ministers, and other members specified by statutory law.

Article 102—Investiture. The president of Romania appoints a candidate for the position of prime minister after consulting the party holding the absolute majority in Parliament, or, if no such majority exists, he consults the parties represented in Parliament. Within 10 days of his appointment, the candidate for the position of prime minister will ask for a vote of confidence from Parliament regarding the program and the entire list of the government. The program and list of the government are discussed by the Chamber of Deputies and the Senate, in joint session. Parliament expresses confidence in the government by the vote of the majority of the deputies and senators.

Article 103—Oath of Allegiance. The prime minister, ministers, and other members of the government will take the oath specified in Article 82 individually, before the president of Romania. The government as a whole and each member separately will exercise their mandates beginning on the date that they are sworn in.

Article 104—Incompatibilities. The position of member of the government is incompatible with the exercise of any other public function with authority, with the exception of that of deputy or senator. Also, it is incompatible with the exercise of a paid position as a professional representative of a commercial organization. Other incompatibilities are stipulated by statutory law.

Article 105—Termination of the Position of Member of the Government. Membership in the government is terminated by resignation, discharge from position, loss of electoral rights, incompatibility, or death, as well as in other cases specified by law.

Article 106—The Prime Minister. The prime minister directs the government [illegible words] the activity of its members, respecting the powers assigned to them. Also, he presents to the Chamber of Deputies or Senate reports and statements on government policy which are discussed on a priority basis. If the prime minister is in one of the

situations stipulated in Article 105 or is incapable of discharging his duties, the president of Romania will appoint another member of the government as prime minister ad interim to carry out the prime minister's duties until a new government is formed. The interim arrangement, during the period that the prime minister is unable to discharge his duties, ceases when the prime minister resumes his activity in the government. The provisions of sentence 2 of this article will also be applied accordingly to the other members of the government, upon recommendation of the prime minister, for a period of no more than 45 days.

Article 107—Acts of the Government. The government adopts decisions and rulings. Decisions are issued for the purpose of organizing the implementation of laws. Rulings are issued on the basis of a special empowerment law within the limits and in the conditions specified by the law. The decisions and rulings adopted by the government are signed by the prime minister, countersigned by the ministers charged with implementing them, and published in *Monitoruil Oficial al Romaniel.* The decision or ruling is void if it is not published. Decisions of a military nature are transmitted only to the institutions concerned.

Article 108—Accountability of Members of the Government. The government is politically accountable only to Parliament for its entire activity. Each member of the government is politically accountable, jointly with the other members, for the activity and acts of the government. Only the Chamber of Deputies, the Senate, and the president of Romania have the right to call for the prosecution of members of the government for actions carried out in the exercise of their duties. If prosecution is requested, the president of Romania can order that the government members be suspended from their positions. Any government member on trial is suspended from his position. The Supreme Court of Justice has the competence to judge the case. The grounds for accountability and the punishments applicable for members of the government are regulated by a law on ministerial accountability.

Article 109—The End of the Mandate. The government will exercise its mandate up to the date of the validation of the general parliamentary elections. The government is released on the date on which Parliament withdraws the confidence it has given it or if the prime minister is in one of the situations specified in Article 105 or is unable to carry out his duties for more than 45 days. The provisions of Article 102 are applicable in the situations stipulated in sentence 2 of this article. The government whose mandate has ceased in accordance with sentences 1 and 2 immediately above will carry out only those actions which are necessary for taking care of public business until the members of the new government are sworn in.

Chapter IV. Relations Between Parliament and Government

Article 110—Reporting to Parliament. The government and the other organs of public administration, in the framework of the monitoring of their activity by Parliament, must provide the information and documents requested by the Chamber of Deputies, the Senate, or the parliamentary commissions through their chairmen. If a legislative initiative involves the modification of the provisions of the state budget or the state

social security budget, the request for information is mandatory. The members of the government have access to the proceedings of Parliament. If their presence is requested, their attendance is mandatory.

Article 111—Questions and Interpellations. The government and each one of its members are under obligation to respond to the questions or interpellations formulated by deputies or senators. The Chamber of Deputies or the Senate can approve a motion expressing its position on the issue which is the subject of the interpellation.

Article 112—Censure Motion. The Chamber of Deputies and the Senate, in joint session, can withdraw the confidence given to the government by passing a censure motion by majority vote of the deputies and senators. The censure motion can be initiated by at least one-fourth of the total number of deputies and senators and it is communicated to the government on the date that it is filed. The censure motion is discussed three days after it is presented in the joint session of the two houses. If the censure motion is rejected, the deputies and senators who signed it cannot initiate another censure motion in the same session, with the exception of the case in which the government takes responsibility in accordance with Article 113.

Article 113—Taking of Responsibility by the Government. The government can take responsibility before a joint session of the Chamber of Deputies and the Senate for a program, a statement of general policy, or a draft law. The government is dismissed if a censure motion, filed within three days of the presentation of the program, is voted under the conditions of Article 112. If the government has not been dismissed in accordance with sentence 2 of this article, the draft law which has been presented is considered to be approved and the program or statement of general policy becomes binding for the government. If the president of Romania requests the reexamination of a law approved in accordance with sentence 3 immediately above, the debate on it will take place in a joint session of the two houses.

Article 114—Legislative Delegation. Parliament can pass a special law to empower the government to issue rulings in areas which do not come under statutory laws. The law of empowerment will stipulate, on a mandatory basis, the area and the deadline for issuing rulings. If the law of empowerment requests it, the rulings will be submitted to Parliament for approval, according to legislative procedure, up until the expiration of the deadline for the empowerment. Failure to respect the deadline will cancel the effects of the ruling. In exceptional cases, the government can adopt emergency rulings. They will go into effect only after being sent to Parliament for approval. If Parliament is not in session, it will be convened on a mandatory basis. The rulings are approved or rejected by a law which will also include rulings which are no longer in effect on the basis of sentence 3 immediately above.

Chapter V. Public Administration

Section 1. Specialized Central Public Administration

Article 115—Structure. The ministries are organized only under the subordination of the government. Other specialized bodies can be organized under the subordination of the government or of the ministries or as autonomous administrative authorities.

Article 116—Establishment. The ministries are established and organized and operate in accordance with the law. The government and the ministries can establish, with the approval of the Court of Accounts, specialized bodies subordinate to them, only if the law recognizes this as being within their competence. Autonomous administrative authorities can be established by statutory laws.

Article 117—The Armed Forces. The Army is subject solely to the will of the people for the purpose of guaranteeing the sovereignty, independence, and unity of the state, the territorial integrity of the country, and constitutional democracy. The structure of the national defense system, the organization of the Army, the preparation of the population, the economy, and the territory for defense, and the rules governing military cadres are stipulated by statutory law. The provisions of sentences 1 and 2 here will be applicable, correspondingly, to the police, the state intelligence services, as well as to other components of the Armed Forces. The organization of military or paramilitary activities outside the framework of a state authority is prohibited. Foreign troops can enter into or pass through the territory of Romania only under the conditions specified by the law.

Article 118—The Supreme Council for the Defense of the Country. The Supreme Council for the Defense of the Country organizes and coordinates, on a unitary basis, activities related to the defense of the country and national security.

Section 2. Local Public Administration

Article 119—Basic Principles. Public administration in territorial-administrative districts is based on the principle of local economy and on the principle of the decentralization of public services.

Article 120—Communal and City Authorities. The public administration authorities, which serve as means of implementing local autonomy in the communes and cities, are the elected local councils and the mayors elected in accordance with the law. The local councils and the mayors cooperate as autonomous administrative authorities and handle public affairs in the communes and cities, under the conditions of the law. The authorities stipulated in sentence 2 immediately above can also be set up in territorial-administrative subdivisions of municipalities.

Article 121—The County Council. The county council is the public administration authority in charge of coordinating the activity of the communal and city councils, for the purpose of ensuring public services of interest to the country. The county council is elected and operates in accordance with the law.

Article 122—The Prefect. The government appoints a prefect in each county and in Bucharest municipality. The prefect is the representative of the government on the local level and is in charge of the decentralized public services of the ministries and other central organs in the territorial-administrative units. The powers of the prefect are stipulated by law. The prefect can contest before the disputed claims court any decree of the county council, the local council, or the mayor if he believes that the decree is illegal. The contested decree is suspended by law.

Chapter VI. Judicial Authority

Section 1. Courts of Justice

Article 123—Carrying Out Justice. Justice is carried out in the name of the law. The judges are independent and are subject only to the law.

Article 124—Rules Governing Judges. Judges appointed by the president of Romania are appointed for life, according to the law. The chief justice and the other justices of the Supreme Court of Justice are appointed for a six-year term. They can be reappointed. The promotion, transfer, and punishing of judges can be carried out only by the Higher Council of Magistrates, under the conditions of the law. The position of judge is incompatible with any other public or private position, with the exception of teaching positions in higher education.

Article 125—Courts of Law. Justice is carried out by means of the Supreme Court of Justice and other courts of law stipulated by law. The establishment of extraordinary courts is prohibited. Their jurisdiction and trial procedure are defined by law.

Article 126—The Public Nature of the Debates. Court sessions are public, except for cases stipulated by law.

Article 127—The Right to an Interpreter. The judicial process is carried out in the Romanian language. Citizens belonging to ethnic minorities, as well as persons who do not understand or speak the Romanian language, have the right to be informed on all the documents and items in the file, to speak in court, and to offer conclusions, through an interpreter; this right is ensured free of charge in criminal trials.

Article 128—Contesting Decisions. The parties involved and the Public Ministry can contest court decisions, under the conditions of the law.

Article 129—Court Police. The courts of law have a police force at their disposal.

Section 2. The Public Ministry

Article 130—The Role of the Public Ministry. In the judicial area, the Public Ministry represents the general interests of society and defends the legal order as well as the rights and freedoms of the citizens. The Public Ministry exercises its powers through prosecutors in the prosecutor's office, under the conditions of the law.

Article 131—Rules Governing Prosecutors. The prosecutors carry out their activity on the basis of the principles of legality, impartiality, and hierarchical monitoring under the authority of the minister of justice. The position of prosecutor is incompatible with every other public or private position, with the exception of teaching positions in higher education.

Section 3. The Higher Council of Magistrates

Article 132—Structure. The Higher Council of Magistrates is composed of magistrates who are elected for a four-year term by the Chamber of Deputies and the Senate, in joint session.

Article 133—Duties. The Higher Council of Magistrates proposes to the president of

Romania the appointment of judges and prosecutors, with the exception of intern judges, according to the law. In such cases, the sessions are chaired by the minister of justice, who does not have the right to vote. The Higher Council of Magistrates serves as a disciplinary council for judges. In such cases, its sessions are chaired by the chief justice of the Supreme Court of Justice.

Title IV. The Economy and Public Finance

Article 134—The Economy. The economy of Romania is a market economy. The state is expected to ensure:

(a) free trade, protection for loyal competition, the creation of a favorable framework for the utilization of all production factors;

(b) the protection of national interests in economic, financial, and currency activity;

(c) the stimulation of national scientific research;

(d) the exploitation of natural resources in accordance with the national interest;

(e) the restoration and protection of the environment, as well as the preservation of ecological balance;

(f) the creation of the necessary conditions for improving the quality of life.

Article 135—Property. The state protects property. Property may be public or private. Public property belongs to the state or to territorial-administrative units. Underground resources of any type, lines of communication, airspace, water resources that can produce power or can be used in the public interest, beaches, the territorial sea, the natural resources of the economic zone and the continental shelf, as well as other assets defined by law, are exclusively public property. Publicly owned assets are nontransferable. Under the conditions of the law, they can be given to autonomous managements or public institutions for management or they can be licensed or rented out. Under the conditions of the law, private property is inviolable.

Article 136—Financial System. The formation, administration, use, and monitoring of the financial resources of the state, of territorial-administrative units, and of public institutions will be regulated by law. The national currency is the leu, which is divided into bani.

Article 137—Public Budget. The national public budget incorporates the state budget, the state social security budget, and the local budgets of the communes, cities, and counties. Each year the government prepares the draft state budget and the draft state social security budget which it submits separately to Parliament for approval. If the law on the state budget and the law on the state social security budget are not approved at least three days before the expiration of the budget year, the state budget and the state social security budget for the previous year will continue to be in effect until new budgets are approved. The local budgets are prepared, approved, and executed in accordance with the law. No budgetary expenditure can be approved without stipulating the source of financing.

Article 138—Taxes and Assessments. Taxes, assessments, and any other revenues for the

state budget and the state social security budget are established only by law. Local taxes and assessments are established by the local or county councils, within the limits and under the conditions of the law.

Article 139—The Court of Accounts. The Court of Accounts monitors the formation, administration, and utilization of the financial resources of the state and the public sector. Under the conditions of the law, the Court also exercises jurisdictional functions. The Court of Accounts presents an annual report to Parliament on the management accounts of the national public budget in the past budget year, including any irregularities found. At the request of the Chamber of Deputies or the Senate, the Court monitors the management of public resources and reports its findings. The members of the Court of Accounts appointed by Parliament are independent and cannot be removed, according to law. They are subject to the same regulations as judges in regard to incompatibilities.

Title V. The Constitutional Court

Article 140—Structure. The Constitutional Court is composed of nine justices, appointed for a nine-year term, which cannot be extended or renewed. Three justices are appointed by the Chamber of Deputies, three by the Senate, and three by the president of Romania. The members of the Constitutional Court elect a president by secret ballot for a three-year term. Every three years, one-third of the members of the Constitutional Court are replaced, under the conditions stipulated by the statutory law of the Court.

Article 141—Conditions for Appointment. The justices of the Constitutional Court must have superior legal training, high professional competence, and at least 18 years of experience in the legal profession or on university law faculties.

Article 142—Incompatibilities. The position of member of the Constitutional Court is incompatible with any other public or private position, with the exception of teaching positions on university law faculties.

Article 143—Independence and Irremovability. The members of the Constitutional Court are independent in the exercise of their mandate and cannot be removed in the course of their term.

Article 144—Duties. The Constitutional Court has the following duties:

(a) to pronounce on the constitutionality of laws before their promulgation at the request of the president of Romania, one of the presidents of the two chambers of the government, the Supreme Court of Justice, at least 50 deputies or at least 25 senators, as well as, officially, on initiatives for revising the Constitution;

(b) to pronounce on the constitutionality of regulations of Parliament at the request of one of the presidents of the two chambers, a parliamentary group, at least 50 deputies or at least 25 senators;

(c) to decide on exceptions brought before the courts in regard to the unconstitutionality of laws and rulings;

(d) to monitor the observance of the procedure used to elect the president of Romania and to confirm the results of the voting;

(e) to ascertain the existence of circumstances which justify an interim period for the exercise of the office of president of Romania and to communicate its findings to the Parliament and the government;

(f) to advise on the recommendation to suspend the president of Romania from office;

(g) to monitor compliance with the procedure for organizing and holding a referendum and to confirm its results;

(h) to verify the fulfillment of the conditions for the exercise of legislative initiative by the citizens;

(i) to decide on disputes regarding the constitutionality of a political party.

Article 145—Decisions of the Constitutional Court. In cases of unconstitutionality determined in accordance with Article 144, items (a) and (b), the law or the regulation is submitted for reexamination. If the law is adopted in the same form by a majority of at least two-thirds of the members of each chamber the objection of unconstitutionality is eliminated and promulgation becomes mandatory. The decisions of the Constitutional Court are binding and are not retroactive. They are published in *Monitoruil Oficial al Romaniel.*

Title VI. Revising the Constitution

Article 146—Revision Initiative. The revision of the Constitution can be initiated by the president of Romania upon recommendation of the government, at least one-fourth of the deputies or senators, as well as at least 500,000 citizens with the right to vote. Citizens who initiate the revision of the Constitution must come from at least half the counties of the country and in each of these counties and in Bucharest municipality, at least 20,000 signatures supporting this initiative must be obtained.

Article 147—Revision Procedure. The draft or the recommendation for revision must be approved by the Chamber of Deputies and the Senate by at least a two-thirds majority of the members of each chamber. If no agreement is reached by mediation, the Chamber of Deputies and the Senate, in joint session, will decide by a vote of at least three-fourths of the number of deputies and senators. The revision is final after being approved by a referendum organized within 30 days of the approval of the draft or the recommendation for revision.

Article 148—Revision Limitations. The provisions of the present Constitution concerning the national, independent, unitary, and indivisible character of the Romanian state, the republic as the form of government, territorial integrity, the independence of the system of justice, political pluralism, and the official language cannot be the subject of revision. Similarly, no revision can be made if it results in the elimination of the basic rights and freedoms of citizens or of the guarantees of these rights and freedoms. The Constitution cannot be revised during periods of martial law or a state of emergency or during wartime.

Title VII. Final and Temporary Provisions

Article 149—Enactment. The present Constitution goes into effect on the date of its approval by referendum. On the same date, the Constitution of 21 August 1965 will be and will remain repealed in its entirety.

Article 150—Temporary Conflict of Laws. Laws and all other normative acts will remain in effect, as long as they are not in conflict with the present Constitution. Within 12 months of the enactment of the law on its organization, the Legislative Council will examine the conformity of the legislation with the present Constitution and will make the appropriate recommendations to Parliament or the government, as the case may be.

Article 151—Existing Institutions. The institutions of the Republic in existence on the date that the present Constitution goes into effect will remain in operation until new ones have been established. The members of the new Supreme Court of Justice will be appointed, under the conditions of the law, by the Chamber of Deputies and the Senate, in joint session, upon the recommendation of the president of Romania, within six months of the date that the present Constitution goes into effect.

Article 152—Future Institutions. Within six months of the date of the enactment of the new Constitution, the Constitutional Court and the Court of Accounts will be established. The members of the first Constitutional Court will be appointed for a period of three, six, and nine years, respectively. The president of Romania, the Chamber of Deputies, and the Senate will each appoint one justice for each period.

The Constitution of Romania was adopted in the 21 November 1991 session of the Constituent Assembly by a roll call vote, with 414 votes "for" and 95 votes "against." Presidents of the Constituent Assembly Academician Alexandru Birladeanu and Dan Martian.

CONSTITUTION OF THE RUSSIAN FEDERATION

(As approved by the National Referendum, December 12, 1993)

We, the multinational people of the Russian Federation, united by a common destiny on our land, asserting human rights and liberties, civil peace and concord, preserving the historic unity of the state, proceeding from the generally recognized principles of the equality and self-determination of peoples, honoring the memory of our ancestors, who have passed on to us love and respect for our homeland and faith in good and justice, reviving the sovereign statehood of Russia and asserting its immutable democratic foundations, striving to secure the wellbeing and prosperity of Russia and proceeding from a sense of responsibility for our homeland before the present and future generations, and being aware of ourselves as part of the world community, hereby approve the Constitution of the Russian Federation.

Section One

Chapter 1. Fundamentals of the Constitutional System

Article 1. The Russian Federation—Russia shall be a democratic federal rule-of-law state with the republican form of government. The names "Russian Federation" and "Russia" shall be equivalent.

Article 2. Man, his rights and freedoms shall be the supreme value. It shall be a duty of the state to recognize, respect and protect the rights and liberties of man and citizen.

Article 3. The multinational people of the Russian Federation shall be the vehicle of sovereignty and the only source of power in the Russian Federation. The people of the Russian Federation shall exercise their power directly, and also through organs of state power and local self-government. The referendum and free elections shall be the supreme direct manifestation of the power of the people. No one may arrogate to oneself power in the Russian Federation. Seizure of power or appropriation of power authorization shall be prosecuted under federal law.

Article 4. The sovereignty of the Russian Federation shall apply to its entire territory. The Constitution of the Russian Federation and federal laws shall have supremacy throughout the entire territory of the Russian Federation. The Russian Federation shall ensure the integrity and inviolability of its territory.

Article 5. The Russian Federation shall consist of republics, territories, regions, federal cities, an autonomous region and autonomous areas, which shall be equal subjects of the Russian Federation. The republic (state) shall have its own constitution and legislation. A territory, region, federal city, autonomous region and autonomous area shall have its own charter and legislation. The federated structure of the Russian Federation shall be based on its state integrity, the uniform system of state power, delimitation of scopes of authority and powers between the bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation, equality and self-determination of the peoples in the Russian Federation. All the subjects of the Russian Federation shall be equal among themselves with the federal bodies of state power.

Article 6. Citizenship of the Russian Federation shall be acquired and terminated in accordance with the federal law, and shall be one and equal irrespective of the grounds on which it has been acquired. Every citizen of the Russian Federation shall have all the rights and liberties on its territory and bears equal duties, stipulated by the Constitution of the Russian Federation. A citizen of the Russian Federation may not be stripped of citizenship or of the right to change it.

Article 7. The Russian Federation shall be a social state, whose policies shall be aimed at creating conditions which ensure a dignified life and free development of man. The Russian Federation shall protect the work and health of its people, establish a guaranteed minimum wage, provide state support for family, motherhood, fatherhood, and childhood, and also for the disabled and for elderly citizens, develop a system of social services and establish government pensions, benefits and other social security guarantees.

Article 8. Unity of economic space, free movement of goods, services and financial resources, support for competition and freedom of any economic activity shall be guaranteed in the Russian Federation. Private, state, municipal and other forms of ownership shall be recognized and shall enjoy protection in the Russian Federation.

Article 9. The land and other natural resources shall be used and protected in the Russian Federation as the basis of the life and activity of the peoples living on their respective territories. The land and other natural resources may be in private, state, municipal and other forms of ownership.

Article 10. State power in the Russian Federation shall be exercised on the basis of the separation of legislative, executive and judicial branches. The bodies of legislative, executive and judicial power shall be independent.

Article 11. State power in the Russian Federation shall be exercised by the president of the Russian Federation, the Federal Assembly (Council of the Federation and State Duma), the government of the Russian Federation and the courts of the Russian Federation. State power in the subjects of the Russian Federation shall be exercised by the organs of state authority formed by them. The scopes of authority and powers of the bodies of state authority of the Russian Federation and the bodies of state authority of the subjects of the Russian Federation shall be delimited under this Constitution, federal and other Treaties on the delimitation of scopes of authority and powers.

Article 12. Local self-government shall be recognized and guaranteed in the Russian Federation. Local self-government shall operate independently within the bounds of its authority. The bodies of local self-government shall not be part of the state power bodies.

Article 13. Ideological diversity shall be recognized in the Russian Federation. No ideology may be instituted as a state-sponsored or mandatory ideology. Political plurality and the multiparty system shall be recognized in the Russian Federation. Public associations shall be equal before the law. The establishment and the activities of public associations, whose aims and actions are directed at forcible alteration of the fundamentals of constitutional governance and violation of the integrity of the Russian Federation and undermining of the security of the state, the forming of armed units, the incitement of social, racial, national and religious strife shall be prohibited.

Article 14. The Russian Federation shall be a secular state. No religion may be instituted as state-sponsored or mandatory religion. Religious associations shall be separated from the state, and shall be equal before the law.

Article 15. The Constitution of the Russian Federation shall have supreme legal force and direct effect, and shall be applicable throughout the entire territory of the Russian Federation. Laws and other legal acts adopted by the Russian Federation may not contravene the Constitution of the Russian Federation. Organs of state power and local self-government, officials, citizens and their associations must comply with the laws and the Constitution of the Russian Federation. The laws shall be officially published. Unpublished laws shall not be applicable. No regulatory legal act affecting the rights, liberties and duties of the human being may apply unless it has been published officially for general knowledge. The commonly recognized principles and norms of international law and international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.

Article 16. The provisions of the present Chapter of the Constitution shall be the foundations of the constitutional system of the Russian Federation and may not be changed except as provided for in this Constitution. No other provisions of this Constitution may contravene the foundations of the constitutional system of the Russian Federation.

Chapter 2. Rights and Liberties of Man and Citizen

Article 17. The basic rights and liberties in conformity with the commonly recognized principles and norms of the international law shall be recognized and guaranteed in the Russian Federation and under this Constitution. The basic rights and liberties of the human being shall be inalienable and shall belong to everyone from birth. The exercise of rights and liberties of a human being and citizen may not violate the rights and liberties of other persons.

Article 18. The rights and liberties of man and citizen shall have direct effect. They shall determine the meaning, content and application of the laws, and the activities of

the legislative and executive branches and local self-government, and shall be secured by the judiciary.

Article 19. All people shall be equal before the law and in the court of law. The state shall guarantee the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance. Any restrictions of the rights of citizens on social, racial, national, linguistic or religious grounds shall be forbidden. Man and woman shall have equal rights and liberties and equal opportunities for their pursuit.

Article 20. Everyone shall have the right to life. Capital punishment may, until its abolition, be instituted by the federal law as exceptional punishment for especially grave crimes against life, with the accused having the right to have his case considered in a law court by jury.

Article 21. The dignity of the person shall be protected by the state. No circumstance may be used as a pretext for belittling it. No one may be subjected to torture, violence or any other harsh or humiliating treatment or punishment. No one may be subjected to medical, scientific, or other experiments without his or her free consent.

Article 22. Everyone shall have the right to freedom and personal inviolability. Arrest, detention and keeping in custody shall be allowed only by an order of a court of law. No person may be detained for more than 48 hours without an order of a court of law.

Article 23. Everyone shall have the right to privacy, to personal and family secrets, and to protection of one's honor and good name. Everyone shall have the right to privacy of correspondence, telephone communications, mail, cables and other communications. Any restriction of this right shall be allowed only under an order of a court of law.

Article 24. It shall be forbidden to gather, store, use and disseminate information on the private life of any person without his/her consent. The bodies of state authority and the bodies of local self-government and the officials thereof shall provide to each citizen access to any documents and materials directly affecting his/her rights and liberties unless otherwise stipulated under the law.

Article 25. The home shall be inviolable. No one shall have the right to enter the home against the will of persons residing in it except in cases stipulated by the federal law or under an order of a court of law.

Article 26. Everyone shall have the right to determine and state his own identity. No one can be forced to determine and state his national identity. Everyone shall have the right to use his native language, freely choose the language of communication, education, training and creative work.

Article 27. Everyone who is lawfully staying on the territory of the Russian Federation shall have the right to freedom of movement and to choose the place to stay and residence. Everyone shall be free to leave the boundaries of the Russian Federation. The citizens of the Russian Federation shall have the right to freely return to the Russian Federation.

Article 28. Everyone shall be guaranteed the right to freedom of conscience, to freedom of religious worship, including the right to profess, individually or jointly with

others, any religion, or to profess no religion, to freely choose, possess and disseminate religious or other beliefs, and to act in conformity with them.

Article 29. Everyone shall have the right to freedom of thought and speech. Propaganda or campaigning inciting social, racial, national or religious hatred and strife is impermissible. The propaganda of social, racial, national, religious or language superiority is forbidden. No one may be coerced into expressing one's views and convictions or into renouncing them. Everyone shall have the right to seek, get, transfer, produce and disseminate information by any lawful means. The list of information constituting a state secret shall be established by federal law. The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.

Article 30. Everyone shall have the right to association, including the right to create trade unions in order to protect one's interests. The freedom of public association activities shall be guaranteed. No one may be coerced into joining any association or into membership thereof.

Article 31. Citizens of the Russian Federation shall have the right to gather peacefully, without weapons, and to hold meetings, rallies, demonstrations, marches and pickets.

Article 32. Citizens of the Russian Federation shall have the right to participate in the administration of the affairs of the state both directly and through their representatives. Citizens of the Russian Federation shall have the right to elect and to be elected to bodies of state governance and to organs of local self-government, as well as take part in a referendum. Citizens who have been found by a court of law to be under special disability, and also citizens placed in detention under a court verdict, shall not have the right to elect or to be elected. Citizens of the Russian Federation shall have equal access to state service. Citizens of the Russian Federation shall have the right to participate in administering justice.

Article 33. Citizens of the Russian Federation shall have the right to turn personally to, and send individual and collective petitions to state bodies and bodies of local self-government.

Article 34. Everyone shall have the right to freely use his or her abilities and property for entrepreneurial or any other economic activity not prohibited by the law. No economic activity aimed at monopolization or unfair competition shall be allowed.

Article 35. The right of private property shall be protected by law. Everyone shall have the right to have property in his or her ownership, to possess, use and manage it either individually or jointly with other persons. No one may be arbitrarily deprived of his or her property unless on the basis of decision by a court of law. Property can be forcibly alienated for state needs only on condition of a preliminary and equal compensation. The right of inheritance shall be guaranteed.

Article 36. Citizens and their associations shall have the right to have land in their private ownership. The possession, use and management of the land and other natural resources shall be freely exercised by their owners provided that this does not cause damage to the environment or infringe upon the rights and interests of other persons. The terms and procedures for the use of land shall be determined on the basis of federal laws.

Article 37. Work shall be free. Everyone shall have the right to make free use of his or her abilities for work and to choose a type of activity and occupation. Forced labor shall be prohibited. Everyone shall have the right to work under conditions meeting the requirements of safety and hygiene, to remuneration for work without any discrimination whatsoever and not below the statutory minimum wage, and also the right to security against unemployment. The right to individual and collective labor disputes with the use of means of resolution thereof established by federal law, including the right to strike, shall be recognized. Everyone shall have the right to rest and leisure. A person having a work contract shall be guaranteed the statutory duration of the work time, days off and holidays, and paid annual vacation.

Article 38. Motherhood and childhood, and the family shall be under state protection. Care for children and their upbringing shall be the equal right and duty of the parents. Employable children who have reached 18 years old shall care for their nonemployable parents.

Article 39. Everyone shall be guaranteed social security in old age, in case of disease, invalidity, loss of breadwinner, to bring up children and in other cases established by law. State pensions and social benefits shall be established by laws. Voluntary social insurance, development of additional forms of social security and charity shall be encouraged.

Article 40. Everyone shall have the right to a home. No one may be arbitrarily deprived of a home. State bodies and organs of local self-government shall encourage home construction and create conditions for the realization of the right to a home. Low-income citizens and other citizens, defined by the law, who are in need of housing shall be housed free of charge or for affordable pay from government, municipal and other housing funds in conformity with the norms stipulated by the law.

Article 41. Everyone shall have the right to health care and medical assistance. Medical assistance shall be made available by state and municipal health care institutions to citizens free of charge, with money from the relevant budget, insurance payments and other revenues. The Russian Federation shall finance federal health care and health-building programs, take measures to develop state, municipal and private health care systems, encourage activities contributing to the strengthening of man's health, to the development of physical culture and sport, and to ecological, sanitary and epidemiologic welfare. Concealment by officials of facts and circumstances posing hazards to human life and health shall involve liability in conformity with the federal law.

Article 42. Everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.

Article 43. Everyone shall have the right to education. The accessibility and gratuity of preschool, general secondary and vocational secondary education in public and municipal educational institutions or enterprises. Everyone shall have the right to receive, free of charge and on a competitive basis, higher education in a state or municipal educational institution or enterprise. Basic general education shall be mandatory. Parents or persons substituting for them shall make provisions for their children to receive

basic general education. The Russian Federation shall institute federal state educational standards and support various forms of education and self-education.

Article 44. Everyone shall be guaranteed freedom of literary, artistic, scientific, technical and other types of creative activity. Intellectual property shall be protected by law. Everyone shall have the right to participation in cultural life, to the use of institutions of culture, and access to cultural values. Everyone shall care for the preservation of the historic and cultural heritage and safeguard landmarks of history and culture.

Article 45. State protection for human rights and liberties in the Russian Federation shall be guaranteed. Everyone shall have the right to defend his or her rights and liberties by any means not prohibited by law.

Article 46. Everyone shall be guaranteed protection of his or her rights and liberties in a court of law. The decisions and actions (or inaction) of state organs, organs of local self-government, public associations and officials may be appealed against in a court of law. In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted.

Article 47. No one may be denied the right to having his or her case reviewed by the court and the judge under whose jurisdiction the given case falls under the law. Anyone charged with a crime has the right to have his or her case reviewed by a court of law with the participation of jurors in cases stipulated by the federal law.

Article 48. Everyone is guaranteed the right to qualified legal counsel. Legal counsel shall be provided free of charge in cases stipulated by the law. Each person who has been detained, taken into custody or charged with a crime shall have the right to legal counsel (defense attorney) from the moment of, respectively, detention or indictment.

Article 49. Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the procedures stipulated by the federal law and established by the verdict of a court of a law. The defendant shall not be obliged to prove his or her innocence. The benefit of the doubt shall be interpreted in favor of the defendant.

Article 50. No one may be repeatedly convicted for the same offense. In the administration of justice no evidence obtained in violation of the federal law shall be allowed. Everyone sentenced for a crime shall have the right to have the sentence reviewed by a higher court according to the procedure instituted by the federal law, and also the right to plea for clemency or mitigation punishment.

Article 51. No one shall be obliged to give evidence against himself or herself, for his or her spouse and close relatives, the range of which shall be established by the federal law. The federal law may stipulate other exemptions from the obligation to give evidence.

Article 52. The rights of persons who have sustained harm from crimes and abuses of power shall be protected by the law. The state shall guarantee the victims access to justice and compensation for damage.

Article 53. Everyone shall have the right to compensation by the state for the damage caused by the unlawful actions (or inaction) of state organs, or their officials.

Article 54. The law instituting or aggravating the liability of a person shall have no retroactive force. No one may be held liable for an action which was not recognized as an offense at the time of its commitment. If liability for an offense has been lifted or mitigated after its perpetration, the new law shall apply.

Article 55. The listing of the basic rights and liberties in the Constitution of the Russian Federation shall not be interpreted as the denial or belittlement of the other commonly recognized human and citizens' rights and liberties. No laws denying or belittling human and civil rights and liberties may be issued in the Russian Federation. Human and civil rights and liberties may be restricted by the federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defense of the country and the security of the state.

Article 56. Individual restrictions of rights and liberties with identification of the extent and term of their duration may be instituted in conformity with the federal constitutional law under conditions of the state of emergency in order to ensure the safety of citizens and protection of the constitutional system. A state of emergency throughout the territory of the Russian Federation and in individual areas thereof may be introduced in the circumstances and in conformity with the procedures defined by the federal constitutional law. The rights and liberties stipulated by Articles 20, 21, 23 (sentence 1), 24, 28, 34 (sentence 1), 40 (sentence 1), and 46–54 of the Constitution of the Russian Federation shall not be subject to restriction.

Article 57. Everyone shall pay lawful taxes and fees. Laws introducing new taxes or worsening the situation of taxpayers shall not have retroactive force.

Article 58. Everyone shall be obliged to preserve nature and the environment, and care for natural wealth.

Article 59. Defense of the homeland shall be a duty and obligation of the citizen of the Russian Federation. The citizen of the Russian Federation shall do military service in conformity with the federal law. The citizen of the Russian Federation whose convictions and faith are at odds with military service, and also in other cases stipulated by the federal law shall have the right to the substitution of an alternative civil service for military service.

Article 60. The citizen of the Russian Federation shall be recognized to be of legal age and may independently exercise his rights and duties in full upon reaching the age of 18.

Article 61. The citizen of the Russian Federation may not be deported out of Russia or extradited to another state. The Russian Federation shall guarantee its citizens defense and patronage beyond its boundaries.

Article 62. The citizen of the Russian Federation may have the citizenship of a foreign state (dual citizenship) in conformity with the federal law or international treaty of the Russian Federation. Possession of the citizenship of the foreign state by the citizen of

the Russian Federation shall not belittle his or her ranks and liberties or exempt him or her from the duties stemming from Russian citizenship unless otherwise stipulated by the federal law or international treaty of the Russian Federation. Foreign citizens and stateless persons shall enjoy in the Russian Federation the rights of its citizens and bear their duties with the exception of cases stipulated by the federal law or international treaty of the Russian Federation.

Article 63. The Russian Federation shall grant political asylum to foreign citizens and stateless citizens in conformity with the commonly recognized norms of the international law. The extradition of persons persecuted for their political views or any actions (or inaction), which are not qualified as criminal by the law of the Russian Federation, to other states shall not be allowed in the Russian Federation. The extradition of persons charged with crimes and also the hand-over of convicts for serving time in other countries shall be effected on the basis of the federal law or international treaty of the Russian Federation.

Article 64. The provisions of these articles form the basis of personal rights in the Russian Federation and may not be charged other than by the means set forth in this Constitution.

Chapter 3. Russian Federation

Article 65. The Russian Federation shall consist of the subjects of the Federation: Republic of Adygeya (Adygeya), Republic of Altai, Republic of Bashkortostan, Republic of Buryatia, Republic of Dagestan, Ingush Republic, Kabardin-Balkar Republic, Republic of Kalmykia-Khalmg Tangch, Karachayevo-Cherkess Republic, Republic of Karelia, Republic of Komi, Republic of Mari El, Republic of Mordovia, Republic of Sakha (Yakutia), Republic of North Ossetia, Republic of Tatarstan (Tatarstan), Republic of Tuva, Udmurt Republic, Republic of Khakasia, Chechen Republic, Chuvash Republic-Chavash Respublics; Altay Territory, Krasnodar Territory, Krasnoyarsk Territory, Maritime Territory, Stavropol Territory, Khabarovsk Territory; Amur Region, Arkhangelsk Region, Astrakhan Region, Belgorod Region, Bryansk Region, Vladimir Region, Volgograd Region, Vologda Region, Voronezh Region, Ivanovo Region, Irkutsk Region, Kaliningrad Region, Kaluga Region, Kamchatka Region, Kemerovo Region, Kirov Region, Kostroma Region, Kurgan Region, Kursk Region, Leningrad Region, Lipetsk Region, Magadan Region, Moscow Region, Murmansk Region, Nizhniy Novgorod Region, Novgorod Region, Novosibirsk Region, Omsk Region, Orenburg Region, Orel Region, Penza Region, Perm Region, Pskov Region, Rostov Region, Ryazan Region, Samara Region, Saratov Region, Sakhalin Region, Sverdlovsk Region, Smolensk Region, Tambov Region, Tver Region, Tomsk Region, Tula Region, Tyumen Region, Ulyanovsk Region, Chelyabinsk Region, Chita Region, Yaroslavl Region; Moscow, St. Petersburg-federal cities; Jewish Autonomous Region; Aga Buryat Autonomous Area, Komi-Permyak Autonomous Area, Koryak Autonomous Area, Nenetsk Autonomous Area, Taymyr (Dolgan-Nenets) Autonomous Area, Ust-Ordynsky Buryat Autonomous Area, Khanty-Mansi Autonomous Area, Chukchi Autonomous Area, Evenk Autonomous Area, Yamal-

Nenets Autonomous Area. Accession to the Russian Federation and the formation of a new subject of the Russian Federation within it shall be carried out as envisaged by the federal constitutional law.

Article 66. The status of a republic shall be defined by the Constitution of the Russian Federation and the constitution of the republic in question. The status of a territory, region, federal city, autonomous region and autonomous area shall be determined by Constitution of the Russian Federation and the Charter of the territory, region, city of federal importance, autonomous region, autonomous area adopted by the legislative (representative) body of the relevant subject of the Russian Federation. A federal law on autonomous regions or areas may be adopted at the nomination from the legislative and executive bodies of an autonomous region or autonomous area. Relations between autonomous areas within part of a territory or region may be regulated by the federal law and an agreement between bodies of state power of the autonomous area and, respectively, bodies of state power of the territory or the region. The status of a subject of the Russian Federation may be changed only with mutual consent of the Russian Federation and the subject of the Russian Federation in accordance with the federal constitutional law.

Article 67. The territory of the Russian Federation shall incorporate the territories of its subjects, the internal and territorial seats and the airspace over them. The Russian Federation shall have sovereign rights and exercise jurisdiction on the continental shelf and in the exclusive economic zone of the Russian Federation under the procedure stipulated by the federal law and norms of international law. The boundaries between the subjects of the Russian Federation may be changed by their mutual agreement.

Article 68. The state language of the Russian Federation throughout its territory shall be the Russian language. The republics shall have the right to institute their own state languages. They shall be used alongside the state language of the Russian Federation in the bodies of state power, bodies of local self-government and state institutions of the republics. The Russian Federation shall guarantee all its peoples the right to preserve their native language and to create the conditions for its study and development.

Article 69. The Russian Federation guarantees the rights of small groups of indigenous peoples in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation.

Article 70. The national flag, State Emblem, and the national anthem, their description and the procedure for their official use shall be established by the federal constitutional law. The capital of the Russian Federation is the city of Moscow. The status of the capital shall be established by federal law.

Article 71. The jurisdiction of the Russian Federation shall include:

(a) the adoption and amendment of the Constitution of the Russian Federation and federal laws and supervision over compliance with them;

(b) the federal system and territory of the Russian Federation;

(c) regulation and protection of the rights and liberties of the human being and citizen; citizenship of the Russian Federation; regulation and protection of the rights of national minorities;

(d) establishment of the system of federal bodies of legislative, executive and judiciary power; procedure for the organization and activities thereof; formation of federal bodies of state power;

(e) federal and state property and management thereof;

(f) determining the basic principles of federal policy and federal programs in the field of state structure, the economy, the environment, and the social, cultural and national development of the Russian Federation;

(g) establishment of the legal framework for a single market; financial, monetary, credit and customs regulation; emission of money and guidelines for price policy; federal economic services, including federal banks;

(h) the federal budget; federal taxes and levies; federal funds of regional development;

(i) federal power grids, nuclear energy, fissionable materials; federal transport, railways, information and communications; space activities;

(j) foreign policy and international relations of the Russian Federation, international treaties of the Russian Federation; questions of war and peace;

(k) foreign trade relations of the Russian Federation;

(l) defense and security; defense production; determining procedures for the sale and purchase of arms, ammunition, military hardware and other equipment; production of fissionable materials, toxic substances, narcotics and the procedure for the use thereof;

(m) defining the status and protection of the state border, territorial waters, airspace, the exclusive economic zone and the continental shelf of the Russian Federation;

(n) law courts; Prosecutor's Office; criminal, criminal-procedural and criminal-executive legislation; amnesty and pardon; civil, civil-procedural and arbitration-procedural legislation; legal regulation of intellectual property;

(o) federal conflict of laws;

(p) meteorological service; standards, models, the metric system and time measurement; geodesy and cartography; names of geographical objects; official statistics and accounting;

(q) state decorations and honorary titles of the Russian Federation;

(r) federal state service.

Article 72. The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation shall include:

(a) ensuring compliance of the constitutions and laws of republics, charters, and other regulatory legal acts of the territories, regions, federal cities, autonomous region and autonomous areas, with the Constitution of the Russian Federation and the federal laws;

(b) protection of the rights and freedoms of man and citizen; protection of the rights of ethnic minorities; ensuring legality, law and order, and public safety; border zone regime;

(c) issues of the possession, use and management of land, mineral resources, water and other natural resources;

(d) delimitation of state property;

(e) management of natural resources; protection of the environment and ecological safety; specially protected natural reserves; protection of historical and cultural monuments;

(f) general questions of upbringing, education, science, culture, physical culture and sports;

(g) coordination of health issues, protection of family, motherhood, fatherhood and childhood; social protection including social security;

(h) implementing measures to combat catastrophes, natural disasters, epidemics and eliminating the consequences thereof;

(i) establishment of the general guidelines for taxation and levies in the Russian Federation;

(j) administrative, administrative-procedural, labor, family, housing, land, water and forestry legislation; legislation on subsurface and environmental protection;

(k) cadres of judiciary and law enforcement agencies; the bar, and notaries public;

(l) protection of the original environment and traditional way of life of ethnic small communities;

(m) establishment of general guidelines of the organization of the system of bodies of state power and local self-government;

(n) coordination of the international and external economic relations of the subjects of the Russian Federation; compliance with the international treaties of the Russian Federation.

The provisions of this Article extend in equal measure to the republics, territories, regions, federal cities, the autonomous region and autonomous areas.

Article 73. Outside of the jurisdiction of the Russian Federation and the powers of the Russian Federation on issues within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, the subjects of the Russian Federation shall exercise the entire spectrum of state power.

Article 74. No customs frontiers, duties, levies, or any other barriers for free movement of goods, services, or financial means may be established on the territory of the Russian Federation. Restrictions on the movement of goods and services may be established under the federal law, if this is necessary for the protection of the people's safety, their lives and health, and the protection of the environment and cultural values.

Article 75. The monetary unit of the Russian Federation shall be the ruble. The monetary emission shall be the exclusive responsibility of the Central Bank of the Russian Federation. No other currencies may be issued in the Russian Federation. The protection and stability of the ruble is the main function of the Central Bank of the Russian Federation which it shall exercise independently from other bodies of state power. The system of taxes levied to the federal budget and the general principles of taxation and levies in the Russian Federation are established by the federal law. State loans shall be issued in accordance with the procedure established by the federal law and placed on a strictly voluntary basis.

Article 76. On issues within the jurisdiction of the Russian Federation, federal constitutional laws and federal laws shall be adopted having direct effect throughout the territory of the Russian Federation. On matters within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, federal laws shall be

issued and, in accordance with them, laws and other regulatory legal acts of the subjects of the Russian Federation shall be adopted. Federal laws may not contravene federal constitutional laws.

Outside of the jurisdiction of the Russian Federation and the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation republics, territories, regions, federal cities, the autonomous regions and autonomous areas shall effect their own legal regulation, including the adoption of laws and other regulatory legal acts. Laws and other regulatory legal acts of the subjects of the Russian Federation may not contravene federal laws adopted in accordance with [sentences 1 and 2] of this Article. In the event of a contradiction between a federal law and any other act issued in the Russian Federation, the federal law shall apply. In the event of a contradiction between the federal law and a regulatory legal act of a subject of the Russian Federation issued in accordance with [sentence 4] of this Article, the regulatory legal act of the subject of the Russian Federation shall apply.

Article 77. The system of state power bodies of the republics, territories, regions, federal cities, the autonomous region and autonomous areas shall be established by the subjects of the Russian Federation independently in accordance with the basic principles of the constitutional system of the Russian Federation and general principles of the organization of legislative and executive bodies of power as envisaged by the federal law. Within the jurisdiction of the Russian Federation and the powers of the Russian Federation on issues within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation the federal bodies of executive power and bodies of executive power of the subjects of the Russian Federation shall form a unified system of executive power in the Russian Federation.

Article 78. To exercise their powers, the federal bodies of executive power may set up their own territorial structures and appoint respective officials. By agreement with organs of executive power of the subjects of the Russian Federation, the federal organs of executive power may delegate to them part of their powers provided this does not contravene the Constitution of the Russian Federation or federal laws. By agreement with the federal organs of executive power, organs of executive power of the subjects of the Russian Federation may delegate part of their powers to them. The President of the Russian Federation and the government of the Russian Federation shall, under the Constitution of the Russian Federation, exercise the authority of federal state power throughout the territory of the Russian Federation.

Article 79. The Russian Federation may participate in interstate associations and delegate some of its powers to them in accordance with international agreements if this does not restrict human or civil rights and liberties or contravene the fundamentals of the constitutional system of the Russian Federation.

Chapter 4. President of the Russian Federation

Article 80. The President of the Russian Federation shall be the head of state. The President shall be the guarantor of the Constitution of the Russian Federation, and of human and civil rights and freedoms. In accordance with the procedure established by

the Constitution of the Russian Federation, he shall take measures to protect the sovereignty of the Russian Federation, its independence and state integrity, and ensure concerted functioning and interaction of all bodies of state power. The President of the Russian Federation shall define the basic domestic and foreign policy guidelines of the state in accordance with the Constitution of the Russian Federation and federal laws. The President of the Russian Federation as head of state shall represent the Russian Federation inside the country and in international relations.

Article 81. The President of the Russian Federation shall be elected for a term of four years by the citizens of the Russian Federation on the basis of general, equal and direct vote by secret ballot. A citizen of the Russian Federation not younger than 35, who has resided in the Russian Federation for not less than 10 years, may be elected President of the Russian Federation. No one person shall hold the office of President of the Russian Federation for more than two terms in succession. The procedure for electing the President of the Russian Federation shall be determined by federal law.

Article 82. At his inauguration the President of the Russian Federation shall take the following oath to the people: "I vow, in the performance of my powers as the President of the Russian Federation to respect and protect the rights and freedoms of man and citizen, to observe and protect the Constitution of the Russian Federation, to protect the sovereignty and independence, security and integrity of the state and to serve the people faithfully." The oath shall be taken in a solemn atmosphere in the presence of members of the Council of the Federation, deputies of the State Duma and judges of the Constitutional Court of the Russian Federation.

Article 83. The president of the Russian Federation shall:

(a) appoint the Chairman of the Government of the Russian Federation subject to consent of the State Duma;

(b) have the right to preside over meetings of the Government of the Russian Federation;

(c) decide on the resignation of the Government of the Russian Federation;

(d) introduce to the State Duma a candidature for appointment to the office of the Chairman of the Central Bank of the Russian Federation; submit to the State Duma the proposal on relieving the Chairman of the Central Bank of the Russian Federation of his duties;

(e) appoint and dismiss deputy chairmen of the Government of the Russian Federation and federal ministers as proposed by the Chairman of the Government of the Russian Federation;

(f) submit to the Federation Council candidates for appointment to the office of judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation as well as candidate for Prosecutor-General of the Russian Federation; submit to the Federation Council the proposal on relieving the Prosecutor-General of the Russian Federation of his duties; appoint the judges of other federal courts;

(g) form and head the Security Council of the Russian Federation, the status of which is determined by federal law;

(h) endorses the military doctrine of the Russian Federation;

(i) form the staff of the President of the Russian Federation;

(j) appoint and dismiss plenipotentiary representatives of the President of the Russian Federation;

(k) appoint and dismiss the Supreme Command of the Armed Forces of the Russian Federation;

(l) appoint and recall, after consultations with the respective committees or commissions of the Federal Assembly, diplomatic representatives of the Russian Federation to foreign states and international organizations.

Article 84. The President of the Russian Federation shall:

(a) call elections to the chambers of the State Duma in accordance with the Constitution of the Russian Federation and federal law;

(b) dissolve the State Duma in cases and under procedures envisaged by the Constitution of the Russian Federation;

(c) call a referendum under procedures established by federal constitutional law;

(d) introduce draft laws in the State Duma;

(e) sign and publish federal laws;

(f) present annual messages to the Federal Assembly on the situation in the country and on basic directions of the internal and external policies of the state.

Article 85. The President of the Russian Federation may use dispute settlement procedures to settle differences between organs of state power of the Russian Federation and organs of state power of the subjects of the Russian Federation, and also between organs of state power of the subjects of the Russian Federation. If no decision is agreed upon, he may turn the dispute over for review by the respective court of law. The President of the Russian Federation shall have the right to suspend acts by organs of executive power of the subjects of the Russian Federation if such acts contravene the Constitution of the Russian Federation and federal laws, the international obligations of the Russian Federation, or violate human and civil rights and liberties, pending the resolution of the issue in the appropriate court.

Article 86. The President of the Russian Federation shall:

(a) supervise the conduct of the foreign policy of the Russian Federation;

(b) conduct negotiations and sign international treaties of the Russian Federation;

(c) sign instruments of ratification;

(d) accept credentials and instruments of recall of diplomatic representatives accredited with him.

Article 87. The President of the Russian Federation shall be the Supreme Commander-in-Chief of the Armed Forces of the Russian Federation. In the event of aggression against the Russian Federation or an immediate threat thereof, the President of the Russian Federation shall introduce martial law on the territory of the Russian Federation or in areas thereof with immediate notification thereof of the Federation Council and State Duma. The martial law regime shall be regulated by the federal constitutional law.

Article 88. Under the circumstances and procedures envisaged by the federal constitu-

tional law, the President of the Russian Federation shall impose a state of emergency on the territory of the Russian Federation or in areas thereof with immediate notification of the Federation Council and State Duma.

Article 89. The President of the Russian Federation shall:

(a) resolve issues of citizenship of the Russian Federation and of granting political asylum;

(b) award state decorations of the Russian Federation, confer honorary titles of the Russian Federation and top military ranks and top specialized titles;

(c) grant pardons.

Article 90. The President of the Russian Federation shall issue decrees and executive orders. The decrees and orders of the President of the Russian Federation shall be binding throughout the territory of the Russian Federation. The decrees and orders of the President of the Russian Federation may not contravene the Constitution of the Russian Federation or federal laws.

Article 91. The President of the Russian Federation shall possess immunity.

Article 92. The President of the Russian Federation shall assume his powers from the time he shall be sworn in and terminate his exercise of such powers with the expiry of his tenure of office from the time the newly elected President of the Russian Federation shall have been sworn in. The powers of the President of the Russian Federation shall be terminated in the event of his resignation or sustained inability due to health to discharge his powers or in the event of impeachment. In such cases new elections of the President of the Russian Federation shall be held not later than three months after the early termination of the President's powers. In all cases when the President of the Russian Federation shall be unable to perform his duties, such duties shall be temporarily performed by the chairman of the Government of the Russian Federation. The acting president of the Russian Federation shall have no right to dissolve the State Duma, call a referendum or make proposals on amendment or revision of the provisions of the Constitution of the Russian Federation.

Article 93. The President of the Russian Federation may be impeached by the Federation Council only on the basis of charges put forward against him of high treason or some other grave crime, confirmed by a ruling of the Supreme Court of the Russian Federation on the presence of indicia of crime in the President's actions and by a ruling of the Constitutional Court of the Russian Federation confirming that the procedure of bringing charges has been observed. The ruling of the State Duma on putting forward charges and the decision of the Federation Council on impeachment of the President shall be passed by the votes of two-thirds of the total number in each of the chambers at the initiative of at least one-third of the deputies of the State Duma and in the presence of the opinion of a special commission formed by the State Duma. The decision of the Federation Council on impeaching the President of the Russian Federation shall be passed within three months of the charges being brought against the President by the State Duma. The charges against the President shall be considered to be rejected if the decision of the Federation Council shall not be passed.

Chapter 5. Federal Assembly

Article 94. The Federal Assembly—Parliament of the Russian Federation—shall be the supreme representative and legislative body of the Russian Federation.

Article 95. The Federal Assembly shall consist of two chambers—the Federation Council and the State Duma. Two deputies from each subject of the Federation shall be members of Federation Council; one from the representative and one from the executive bodies of state authority. The State Duma shall consist of 450 deputies.

Article 96. The State Duma shall be elected for a term of four years. The procedure for forming the Federation Council and the procedure for electing deputies to the State Duma shall be established by federal laws.

Article 97. Any citizen of the Russian Federation aged 21 and older who has the right to take part in elections may be elected deputy to the State Duma. One and the same person may not concurrently be a member of the Federation Council and to the State Duma. A deputy to the State Duma may not be a deputy to any other representative body of state power or bodies of local self-government. The deputies of the State Duma shall work on a permanent professional basis. Deputies to the State Duma may not be employed in the civil service or engage in any activities for remuneration other than teaching, research or other creative activity.

Article 98. Deputies to the Federation Council and deputies to the State Duma shall possess immunity throughout their term of office. A deputy may not be detained, arrested, searched except when detained in the act of perpetrating a crime, and may not be subject to personal search except when such search shall be authorized by law to ensure the safety of other people. The question of stripping a deputy of immunity shall be decided on the recommendation of the Prosecutor-General of the Russian Federation by the corresponding chamber of the Federal Assembly.

Article 99. The Federal Assembly shall be a permanent body. The State Duma shall hold its first session on the 30th day after its election. The President of the Russian Federation may convene a session of the State Duma before this term. The first session of the State Duma shall be opened by the oldest deputy. From the start of the work of the new State Duma the powers of the previous State Duma shall cease.

Article 100. The Federation Council and the State Duma shall sit separately. The sessions of the Federation Council and the State Duma shall be open. Each chamber has the right to hold closed sessions as envisaged by its rules. The chambers may have joint sessions to hear the addresses of the President of the Russian Federation, addresses of the Constitutional Court of the Russian Federation and speeches by leaders of foreign states.

Article 101. The Federation Council shall elect from among its members the Chairman of the Federation Council and his deputies. The State Duma shall elect from among its members the Chairman of the State Duma and his deputies. The Chairman of the Federation Council and his deputies, and Chairman of the State Duma and his deputies shall preside over the sessions and supervise the internal rules of the chamber. The Federation Council and the State Duma shall form committees and commissions,

exercise parliamentary supervision over issues within their jurisdiction and hold parliamentary hearings. Each chamber shall adopt its own rules and solve questions of internal organization and work. In order to exercise control over the federal budget the Federation Council and the State Duma shall form an Accounting Chamber, the membership and rules of order of which shall be determined by federal law.

Article 102. The jurisdiction of the Federation Council shall include:

(a) approval of changes of borders between the subjects of the Russian Federation;

(b) approval of the decree of the President of the Russian Federation on the introduction of martial law;

(c) approval of a decree of the President of the Russian Federation on the introduction of a state of emergency;

(d) making decisions on the possibility of the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation;

(e) calling of elections of the President of the Russian Federation;

(f) impeachment of the President of the Russian Federation;

(g) the appointment of judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Court of Arbitration of the Russian Federation;

(h) the appointment to office and removal from office of the Prosecutor-General of the Russian Federation;

(i) the appointment to office and removal from office of the deputy Chairman of the Accounting Chamber and half of its staff of auditors.

The Federation Council shall pass resolutions on the issues within its jurisdiction under the Constitution of the Russian Federation. The decrees of the Federation Council shall be adopted by a majority of all deputies to the Federation Council members unless otherwise provided for by the Constitution of the Russian Federation.

Article 103. The jurisdiction of the State Duma shall include:

(a) granting consent to the President of the Russian Federation for the appointment of the Chairman of the Government of the Russian Federation;

(b) decisions on confidence in the government of the Russian Federation;

(c) the appointment and dismissal of the Chairman of the Central Bank of the Russian Federation;

(d) the appointment and dismissal of the Chairman of the Accounting Chamber and half of its staff of auditors;

(e) the appointment and dismissal of the Plenipotentiary for Human Rights acting in accordance with the Federal Constitutional Law;

(f) granting amnesty;

(g) bringing charges against the President of the Russian Federation for his impeachment.

The State Duma shall adopt resolutions on the issues of its jurisdiction envisaged by the Constitution of the Russian Federation. The resolutions of the State Duma shall be adopted by a majority of votes of all deputies of the State Duma unless otherwise provided for by the Constitution of the Russian Federation.

Article 104. The President of the Russian Federation, the Federation Council, the

members of the Federation Council, the deputies to the State Duma, the Government of the Russian Federation and legislative (representative) bodies of the subjects of the Russian Federation shall have the right of legislative initiative. The Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Court of Arbitration of the Russian Federation shall also have the right of legislative initiative within their jurisdiction. Draft laws shall be introduced in the State Duma. The draft laws on the introduction or abolishing of taxes, exemption from the payment thereof, on the issue of state loans, on changes in the financial obligations of the state and other draft laws providing for expenditures covered from the federal budget may be introduced to the State Duma only with a corresponding resolution by the Government of the Russian Federation.

Article 105. Federal laws shall be passed by the State Duma. Federal laws shall be passed by majority of votes of all deputies of the State Duma unless otherwise provided for by the Constitution of the Russian Federation. Laws adopted by the State Duma shall be passed to the Federation Council for review within five days. A federal law shall be considered passed by the Federation Council if more than half of its deputies vote for it or if within fourteen days it has not been considered by the Federation Council. In the event the Federation Council shall reject the federal law, the chambers may set up a conciliatory commission to settle the differences, whereupon the federal law shall again be considered by the State Duma. In the event the State Duma shall disagree with the decision of the Federation Council, the federal law shall be considered adopted if, in the second voting, at least two-thirds of the total number of deputies to the State Duma vote for it.

Article 106. The federal laws adopted by the State Duma shall be considered by the Federation Council on a mandatory basis if such laws deal with the issues of:

(a) the federal budget;

(b) federal taxes and levies;

(c) financial, monetary, credit and customs regulation and money emission;

(d) ratification and denunciation of international treaties of the Russian Federation;

(e) the status and protection of the state border of the Russian Federation;

(f) war and peace.

Article 107. An adopted federal law shall be sent to the President of the Russian Federation for signing and publication within five days. The President of the Russian Federation shall, within fourteen days, sign a federal law and publish it. If the President rejects a federal law within fourteen days since it was sent to him, the State Duma and the Federation Council shall again consider the law in accordance with the procedure established by the Constitution of the Russian Federation. If, during the second hearings, the federal law shall be approved in its earlier draft by a majority of not less than two-thirds of the total number of deputies of the Federation Council and the State Duma, it shall be signed by the President of the Russian Federation within seven days and published.

Article 108. Federal constitutional laws shall be passed on issues specified in the Constitution of the Russian Federation. A federal constitutional law shall be considered

adopted, if it has been approved by a majority of at least three-quarters of the total number of deputies of the Federation Council and at least two-thirds of the total number of deputies of the State Duma. The adopted federal constitutional law shall be signed by the President of the Russian Federation within fourteen days and published.

Article 109. The State Duma may be dissolved by the President of the Russian Federation in cases stipulated in Articles 111 and 117 of the Constitution of the Russian Federation. In the event of the dissolution of the State Duma, the President of the Russian Federation shall determine the date of elections so that the newly elected State Duma shall convene not later than four months since the time of dissolution. The State Duma may not be dissolved on grounds provided for by Article 117 of the Constitution of the Russian Federation within one year after its election. The State Duma may not be dissolved since the time it has brought accusations against the President of the Russian Federation and until a corresponding decision has been taken by the Federation Council. The State Duma may not be dissolved during the period of the state of emergency or martial law throughout the territory of the Russian Federation, as well as within six months of the expiry of the term of office of the President of the Russian Federation.

Chapter 6. The Government of the Russian Federation

Article 110. Executive power in the Russian Federation shall be exercised by the Government of the Russian Federation. The Government of the Russian Federation shall consist of the Chairman of the Government of the Russian Federation and Deputy Chairmen of the Government federal ministers.

Article 111. The Chairman of the Government of the Russian Federation shall be appointed by the President of the Russian Federation with consent of the State Duma. The proposal on the candidacy of the Chairman of the Government of the Russian Federation shall be made no later than two weeks after the inauguration of the newly elected President of the Russian Federation or after the resignation of the Government of the Russian Federation or within one week after the rejection of the candidate by the State Duma. The State Duma shall consider the candidacy of the Chairman of the Government of the Russian Federation submitted by the President of the Russian Federation within a week after the nomination. After the State Duma thrice rejects candidates for Chairman of the Government of the Russian Federation nominated by the President of the Russian Federation, the President of the Russian Federation shall appoint Chairman of the Government of the Russian Federation, dissolve the State Duma and call new elections.

Article 112. The Chairman of the Government of the Russian Federation shall, not later than one week after appointment, submit to the President of the Russian Federation proposals on the structures of the federal bodies of executive power. The Chairman of the Government of the Russian Federation shall propose to the President of the Russian Federation candidates for the office of Deputy Chairmen of the Government of the Russian Federation and federal ministers.

Article 113. The Chairman of the Government of the Russian Federation, in accor-

dance with the Constitution of the Russian Federation, federal laws and decrees of the President of the Russian Federation shall determine the guidelines of the work of the Government of the Russian Federation and shall organize its work.

Article 114. The Government of the Russian Federation shall:

(a) develop and submit the federal budget to the State Duma and ensure compliance therewith; submit a report on the execution of the federal budget to the State Duma;

(b) ensure the implementation in the Russian Federation of a uniform financial, credit and monetary policy;

(c) ensure the implementation in the Russian Federation of a uniform state policy in the field of culture, science, education, health, social security and ecology;

(d) manage federal property;

(e) adopt measures to ensure the country's defense, state security and the implementation of the foreign policy of the Russian Federation;

(f) implement measures to ensure legality, the rights and freedoms of citizens, protect property and public law and order and control crime;

(g) exercise any other powers vested in it by the Constitution of the Russian Federation, federal laws and the decrees of the President of the Russian Federation.

The work of the Government of the Russian Federation shall be regulated by federal constitutional law.

Article 115. On the basis of and pursuant to the Constitution of the Russian Federation, federal laws and normative decrees of the President of the Russian Federation the Government of the Russian Federation shall issue decrees and orders and ensure their implementation thereof. The decrees and orders of the Government of the Russian Federation shall be binding throughout the Russian Federation. The decrees and executive orders of the Government of the Russian Federation may be repealed by the President of the Russian Federation if they contravene the Constitution of the Russian Federation, federal laws and the decrees of the President of the Russian Federation.

Article 116. The Government of the Russian Federation shall lay down its powers before the newly elected President of the Russian Federation.

Article 117. The Government of the Russian Federation may hand in its resignation which may be accepted or rejected by the President of the Russian Federation. The President of the Russian Federation may take a decision about the resignation of the Government of the Russian Federation. The State Duma may express nonconfidence in the Government of the Russian Federation. The nonconfidence resolution shall be approved by a simple majority of deputies in the State Duma. After the State Duma has expressed nonconfidence in the Government of the Russian Federation, the President of the Russian Federation shall have the right to announce the resignation of the Government, or disagree with the decision of the State Duma. In the event the State Duma shall again express nonconfidence in the Government of the Russian Federation within three months, the President of the Russian Federation shall announce the resignation of the Government or dissolve the State Duma. The Chairman of the Government of the Russian Federation may put the question of confidence in the Government of the Russian Federation before the State Duma. In the case of a non-

confidence vote by the State Duma, the President shall within seven days make a decision about the resignation of the Government of the Russian Federation or about the dissolution of the State Duma and call a new election. If the Government of the Russian Federation resigns or lays down its powers, it shall, following instructions by the President of the Russian Federation, continue working until the formation of a new government of the Russian Federation.

Chapter 7. The Judiciary

Article 118. Justice in the Russian Federation shall be administered only by law courts. Judiciary power shall be exercised to constitutional, civil, administrative and criminal process. The judiciary system of the Russian Federation shall be established by the Constitution of the Russian Federation and the federal constitutional law. The creation of extraordinary courts shall be forbidden.

Article 119. Citizens of the Russian Federation aged 25 and older, holding a law degree and having worked in the law profession for at least five years may become judges. The federal law may establish additional requirements for judges in the courts of the Russian Federation.

Article 120. Judges shall be independent and shall obey only the Constitution of the Russian Federation and the federal law. A court of law, having established the illegality of an act of government or any other body, shall pass a ruling in accordance with law.

Article 121. Judges may not be replaced. A judge may not have his powers terminated or suspended except under procedures and on grounds established by federal law.

Article 122. Judges shall possess immunity. Criminal proceedings may not be brought against a judge except as provided for by federal law.

Article 123. All trials in all law courts shall be open. The hearing of a case can be in camera in cases provided by the federal law. Hearing of criminal cases in law courts in absentia shall not be allowed except in the cases provided for by the federal law. The trial shall be conducted on an adversarial and equal basis. In cases stipulated by federal law trials shall be held by jury.

Article 124. Law courts shall be financed only out of the federal budget and financing shall ensure full and independent administration of justice in accordance with federal law.

Article 125. The Constitutional Court of the Russian Federation consists of 19 judges. The Constitutional Court of the Russian Federation on request by the President of the Russian Federation, the State Duma, one-fifth of the members of the Federation Council or deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, bodies of legislative and executive power of subjects of the Russian Federation shall resolve cases about compliance with the Constitution of the Russian Federation of:

(a) federal laws, normative enactments of the President of the Russian Federation, the Federation Council, State Duma and the Government of the Russian Federation;

(b) republican constitutions, charters, as well as laws and other normative acts of subjects

of the Russian Federation published on issues pertaining to the jurisdiction of bodies of state power of the Russian Federation and joint jurisdiction of bodies of state power of the Russian Federation and bodies of state power of subjects of the Russian Federation;

(c) agreements between bodies of state power of the Russian Federation and bodies of state power of subjects of the Russian Federation, agreements between bodies of state power of subjects of the Russian Federation;

(d) international agreements of the Russian Federation that have not entered into force.

The Constitutional Court of the Russian Federation shall resolve disputes over jurisdiction:

(a) between the federal state bodies;

(b) between state bodies of the Russian Federation and state bodies of the subjects of the Russian Federation;

(c) between supreme state bodies of subjects of the Russian Federation.

The Constitutional Court of the Russian Federation, proceeding from complaints about violation of constitutional rights and freedoms of citizens and requests from courts shall review the constitutionality of the law applied or due to be applied in a specific case in accordance with procedures established by federal law. The Constitutional Court of the Russian Federation on request by the President of the Russian Federation, the Federation Council, State Duma, the Government of the Russian Federation, legislative bodies of subjects of the Russian Federation shall interpret the Constitution of the Russian Federation. Acts and their provisions deemed unconstitutional shall lose force thereof; international agreements of the Russian Federation may not be enforced and applied if they violate the Constitution of the Russian Federation. The Constitutional Court of the Russian Federation on request of the Federation Council shall rule on compliance with established procedures when charging the President of the Russian Federation with state treason or other grave crime.

Article 126. The Supreme Court of the Russian Federation shall be the highest judiciary body on civil, criminal, administrative and other matters triable by general jurisdiction courts, and shall effect judiciary supervision over their activity in line with federal procedural forms and shall offer explanations on judicial practice issues.

Article 127. The Supreme Arbitration Court of the Russian Federation shall be the highest judiciary body resolving economic disputes and other cases considered by arbitration courts, and shall carry out judicial supervision over their activity in line with federal legal procedures and shall offer explanations on questions of judiciary practice.

Article 128. Judges of the Constitutional Court of the Russian Federation, of the Supreme Court of the Russian Federation, of Supreme Arbitration Court of the Russian Federation shall be appointed by the Federation Council following nomination by the President of the Russian Federation. Judges of other federal courts shall be appointed by the President of the Russian Federation in accordance with procedures established by federal law. The powers, and procedure of the formation and activities of the Constitutional Court of the Russian Federation, the Supreme Court of the

Russian Federation and the Supreme Arbitration Court of the Russian Federation and other federal courts shall be established by federal constitutional law.

Article 129. The Prosecutor's Office of the Russian Federation is a single centralized system in which lower prosecutors are subordinated to higher prosecutors and the Prosecutor-General of the Russian Federation. The Prosecutor-General of the Russian Federation shall be appointed to his post and relieved from the post by the Federation Council on nomination by the President of the Russian Federation. Prosecutors of subjects of the Russian Federation shall be appointed by the Prosecutor-General of the Russian Federation after consultations with its subjects. Other prosecutors shall be appointed by the Prosecutor-General of the Russian Federation. The powers, organization and working procedure for the Prosecutor's Office of the Russian Federation shall be determined by federal law.

Chapter 8. Local Self-Government

Article 130. Local self-government in the Russian Federation shall ensure independent solution by the population of local issues, the ownership, use and disposal of municipal property. Local self-government shall be exercised by the citizens through referendums, elections and forms of expression of their will, through elected and other bodies of local self-government.

Article 131. Local self-government shall be exercised in the cities, rural areas and other localities taking into account historical and other local traditions. The structure of bodies of local self-government shall be determined by the population independently. The borders of territorial entities under local self-government shall be changed only with the consent of their population.

Article 132. The bodies of local self-government shall independently manage municipal property, form, approve and execute the local budget, establish local taxes and levies, ensure law and order and solve any other local issue. The bodies of local self-government shall be invested under law with certain state powers with the transfer of material and financial resources required to exercise such powers. The exercise of the powers transferred shall be supervised by the state.

Article 133. Local self-government in the Russian Federation shall be guaranteed by the right to judicial protection and compensation for additional expenses arising from the decisions passed by the bodies of state power, and the ban on the restrictions of the rights of local self-government established by the Constitution of the Russian Federation and federal laws.

Chapter 9. Constitutional Amendments and Revisions

Article 134. Proposals on amendments and revision of the constitutional provisions may be made by the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation, legislative (representative) bodies of the subjects of the Russian Federation as well as groups of deputies number-

ing not less than one-fifth of the total number of deputies of the Federation Council or the State Duma.

Article 135. The provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation may not be revised by the Federal Assembly. In the event a proposal to revise any provisions in Chapters 1, 2 and 9 of the Constitution of the Russian Federation shall be supported by three-fifths of the total number of deputies of the Federation Council and the State Duma, a Constitutional Assembly shall be convened in accordance with the federal constitutional law. The Constitutional Assembly may either confirm the inviolability of the Constitution of the Russian Federation or develop a new draft of the Constitution of the Russian Federation which shall be adopted by two-thirds of the total number of deputies to the Constitutional Assembly or submitted to popular vote. The Constitution of the Russian Federation shall be considered adopted during such a poll if more than half of its participants have voted for it, provided that more than half of the electorate have taken part in the poll.

Article 136. Amendments to Chapters 3–8 of the Constitution of the Russian Federation shall be adopted in accordance with the procedures envisaged for the adoption of federal constitutional law and shall come into force following the approval thereof by no less than two-thirds of the subjects of the Russian Federation.

Article 137. Amendments to Article 65 of the Constitution of the Russian Federation, which determines the composition of the Russian Federation, shall be made on the basis of the federal constitutional law on admission to the Russian Federation and the formation within the Russian Federation of a new subject and on a change of the constitutional legal status of the subject of the Russian Federation. In the event of a change in the name of the republic, territory, region, federal cities, autonomous region and autonomous area, the new name of the subject of the Russian Federation shall be included in Article 65 of the Constitution of the Russian Federation.

Second Part

Concluding and Transitional Provisions

1. The constitution of the Russian Federation comes into force from the day of its official publication on the basis of the results of a nationwide vote. The election day, December 12, 1993 is considered the day of the adoption of the Constitution of the Russian Federation. Simultaneously, the Constitution (Fundamental Law) of the Russian Federation—Russia, adopted 12 April 1978, with the changes and amendments that followed, ceases to be valid. In the event of a situation of nonconformity between the Constitution of the Russian Federation and the Federation Treaty, the Agreement on the Delineation of Jurisdiction and Powers between the Federal Bodies of State Power of the Russian Federation and the Bodies of State Power of the Sovereign Republics making up the Russian Federation, the Agreement on the Delineation of Jurisdiction and Powers between the Federal Bodies of State Power of the Russian Federation and Bodies of State Power of the territories, regions, the cities of Moscow

and St. Petersburg of the Russian Federation, the Agreement on the Delineation of Jurisdiction and powers between the Federal Bodies of State Power of the Russian Federation and Bodies of State power of the autonomous region, autonomous areas making up the Russian Federation, and similarly other agreements between the Federal Bodies of State Power of the Russian Federation and Bodies of State Power of the Russian Federation and Bodies of State Power of the subjects of the Russian Federation, agreements between Bodies of State Power of the subjects of the Russian Federation, the provisions of the Constitution of the Russian Federation shall apply.

2. Laws and other legal acts in effect on the territory of the Russian Federation until the enactment of this Constitution are enforced insofar as they do not contravene the Constitution of the Russian Federation.

3. The President of the Russian Federation, elected in accordance with the Constitution (Fundamental Law) of the Russian Federation—Russia, from this day this Constitution takes effect exercises the powers set down in the Constitution until the end of his term for which he was elected.

4. The Council of Ministers of the Government of the Russian Federation from this day this Constitution takes effect assumes the rights, duties and responsibilities of the Government of the Russian Federation set down in the Constitution of the Russian Federation and in future shall be designated as the Government of the Russian Federation.

5. Courts in the Russian Federation exercise the right to administer justice in accordance with their powers as set down in this Constitution. After the Constitution takes effect, the judges of all courts of the Russian Federation preserve their powers until the end of their terms for which they were elected. Vacancies shall be filled in accordance with the procedures set down in this Constitution.

6. Until the adoption of a federal law setting forth the procedures for trial by jury, the prior procedure for conducting trials shall be retained. Until the enforcement of criminal procedural legislation of the Russian Federation in accordance with the provisions of this Constitution, the prior procedures of the arrest, custody and detention of individuals suspected of committing crimes shall be maintained.

7. The Federation Council and the State Duma of the first convocation shall be elected for a two-year term.

8. The Federation Council shall hold its first session on the 30th day after election. The first session of the Federation Council shall be opened by the President of the Russian Federation.

9. A deputy of the State Duma of the first convocation may simultaneously be a member of the Government of the Russian Federation. Deputies of the State Duma—members of the Government of the Russian Federation—are not covered by the provisions of this Constitution concerning deputies' immunity from responsibility for their activities (or their lack of activity) connected with the execution of their official duties. Deputies of the Federation Council of the first convocation shall exercise their powers on a temporary basis.

CONSTITUTION OF THE SLOVAK REPUBLIC

(Passed by the Slovak National Council on September 1 and signed on September 3, 1992.)

Preamble

We, the Slovak nation, mindful of the political and cultural heritage of our forebears, and of the centuries of experience from the struggle for national existence and our own statehood, in the sense of the spiritual heritage of Cyril and Methodius and the historical legacy of the Great Moravian Empire, proceeding from the natural right of nations to self-determination, together with members of national minorities and ethnic groups living on the territory of the Slovak Republic, in the interest of lasting peaceful cooperation with other democratic states, seeking the application of the democratic form of government and the guarantees of a free life and the development of spiritual culture and economic prosperity, that is, we, citizens of the Slovak Republic, adopt through our representatives the following Constitution:

Chapter One

Part One: Basic Provisions

Article 1. The Slovak Republic is a sovereign, democratic, and law-governed state. It is not linked to any ideology or religious belief.

Article 2. State power is derived from citizens, who execute it through their elected representatives or directly. State bodies can act only on the basis of the Constitution, within its limits, and to the extent and in a manner defined by law. Everyone can do what is not forbidden by law and no one must be forced to do anything that is not laid down by law.

Article 3. The territory of the Slovak Republic is united and indivisible. The borders of the Slovak Republic can be changed only by a constitutional law.

Article 4. Natural wealth, underground water, natural medicinal springs, and waterways are in the ownership of the Slovak Republic.

Article 5. Conditions for the acquisition and loss of the citizenship of the Slovak Republic are determined by law. No one must be deprived of the citizenship of the Slovak Republic against his will.

Article 6. Slovak is the state language on the territory of the Slovak Republic. The use of other languages in dealings with the authorities will be regulated by law.

Article 7. On the basis of its free decision, the Slovak Republic can enter into a state alliance [zvazok] with other states. The right to secession from this alliance must not be restricted. The decision on entering into a state alliance with other states or on secession from this alliance will be made by a constitutional law and a subsequent referendum.

Article 8. The state symbols of the Slovak Republic are the state emblem, the national flag, the state seal, and the national anthem.

Article 9. The state emblem of the Slovak Republic is represented by a red, early Gothic shield featuring a silver double cross on the middle of three blue symbolic mountain peaks. The national flag of the Slovak Republic consists of three long bands—white, blue, and red. The front side of the national flag of the Slovak Republic features the state emblem of the Slovak Republic. The state seal of the Slovak Republic is represented by the state emblem of the Slovak Republic, with the inscription "Slovak Republic" positioned in a circle around it. The national anthem of the Slovak Republic is the first two stanzas of the song "Nad Tatrou sa blyska" [Lightning Flashes Over the Tatra Mountains]. Details concerning the state emblem, the national flag, the state seal, and the national anthem and their use will be set out in a law.

Article 10. Bratislava is the capital of the Slovak Republic. The status of Bratislava as the capital of the Slovak Republic will be set out in a law.

Chapter Two: Basic Rights and Freedoms

Part One: General Provisions

Article 11. International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.

Article 12. People are free and equal in dignity and their rights. Basic rights and liberties are inviolable, inalienable, secured by law, and unchallengeable. Basic rights and liberties on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, color of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status. No one must be harmed, preferred, or discriminated against on these grounds. Everyone has the right to freely decide on his nationality. Any influence on this decision and any form of pressure aimed at assimilation are forbidden. No one must be restricted in his rights because he upholds his basic rights and liberties.

Article 13. Duties can be imposed only on the basis of law, within its limits, and while complying with basic rights and liberties. Limits to basic rights and liberties can be set only by law, under conditions laid down in this Constitution. Legal restrictions of constitutional rights and liberties must apply equally to all cases that meet the set

conditions. When restricting constitutional rights and liberties, attention must be paid to their essence and meaning. These restrictions must not be used for any other than the set purpose.

Part Two: Basic Human Rights and Liberties

Article 14. Everyone is worthy of having rights.

Article 15. Everyone has the right to life. Human life is worthy of protection even prior to birth. No one must be deprived of life. Capital punishment is not permitted. If someone was deprived of life as a result of an action that does not represent a criminal act, this does not constitute a violation of rights according to this article.

Article 16. (1) The inviolability and privacy of the person are guaranteed and can be limited only in cases defined by law.

(2) No one must be tortured or subjected to cruel, inhuman, or humiliating treatment or punishment.

Article 17. (1) Personal freedom is guaranteed.

(2) No one must be prosecuted or deprived of freedom other than for reasons and in a manner defined by law. No one must be deprived of freedom solely because of his inability to comply with a contractual obligation.

(3) A person accused or suspected of a criminal act can be detained only in cases defined by law. The detained person must be immediately informed of the reasons for the detainment, interrogated, and either released or brought before the court within 24 hours at the latest. The judge must question the detainee within 24 hours of taking over the case and decide on his or her custody or release.

(4) An accused person may be arrested only on the basis of a written, substantiated court warrant. The arrested person must be brought before the court within 24 hours. The judge must question the arrested person within 24 hours of taking over the case and decide on his or her custody or release.

(5) A person can be taken into custody only for reasons and for a period defined by law and on the basis of a court ruling.

(6) The law will specify in which cases a person can be admitted to, or kept in, institutional health care without his or her consent. Such a measure must be reported within 24 hours to the court, which will then decide on this placement within five days.

(7) The mental state of a person accused of criminal activity can be examined only on the basis of the court's written order.

Article 18. (1) No one must be subjected to forced labor or services.

(2) The provision of section 1 does not apply to

(a) work assigned according to the law to persons serving a prison term or some other punishment substituting for a prison term,

(b) military service or some other service assigned by law in lieu of compulsory military service,

(c) services required on the basis of the law in the event of natural catastrophes, accidents, or other dangers posing a threat to life, health, or property of great value,

(d) activities laid down by law to protect life, health, or the rights of others.

Article 19. (1) Everyone has the right to the preservation of his human dignity and personal honor, and the protection of his good name.
(2) Everyone has the right to protection against unwarranted interference in his private and family life.
(3) Everyone has the right to protection against the unwarranted collection, publication, or other illicit use of his personal data.
Article 20. (1) Everyone has the right to own property. The ownership right of all owners has the same legal content and deserves the same protection. Inheritance of property is guaranteed.
(2) The law will specify which property other than property listed in Article 4 that is essential to meet the needs of society, the development of the national economy, and public interest can be owned only by the state, community, or designated juridical persons. The law can also specify that certain property can be owned only by citizens or juridical persons resident in the Slovak Republic.
(3) Ownership is binding. It must not be misused to the detriment of others or at variance with general interests protected by law. By exercising ownership, no harm must be done to human health, nature, cultural monuments, and the environment beyond limits set by law.
(4) Expropriation or enforced restriction of the ownership right is admissible only to the extent that it is unavoidable and in the public interest, on the basis of law, and in return for adequate compensation.
Article 21. (1) A person's home is inviolable. It must not be entered without the resident's consent.
(2) A house search is admissible only in connection with criminal proceedings and only on the basis of the judge's written and substantiated order. The method of carrying out a house search will be set out in a law.
(3) Other infringements upon the inviolability of one's home can be permitted by law only if this is inevitable in a democratic society in order to protect people's lives, health, or property, to protect the rights and liberties of others, or to ward off a serious threat to public order. If the home is used also for business or to perform some other economic activity, such infringements can be permitted by law also when this is unavoidable in meeting the tasks of public administration.
Article 22. (1) The privacy of correspondence and secrecy of mailed messages and other written documents and the protection of personal data are guaranteed.
(2) No one must violate the privacy of correspondence and the secrecy of other written documents and records, whether they are kept in privacy or sent by mail or in another way, with the exception of cases to be set out in a law. Equally guaranteed is the secrecy of messages conveyed by telephone, telegraph, or other similar means.
Article 23. (1) Freedom of movement and of abode are guaranteed.
(2) Everyone who is rightfully staying on the territory of the Slovak Republic has the right to freely leave this territory.
(3) Freedoms according to sections 1 and 2 can be restricted by law if it is unavoidable for the security of the state, to maintain public order, protect the health and the rights

and liberties of others, and, in designated areas, also for reasons of environmental protection.

(4) Every citizen has the right to freely enter the territory of the Slovak Republic. A citizen must not be forced to leave his homeland and he must not be deported or extradited.

(5) A foreign national can be deported only in cases specified by law.

Article 24. (1) The freedoms of thought, conscience, religion, and faith are guaranteed. This right also comprises the possibility to change one's religious belief or faith. Everyone has the right to be without religious belief. Everyone has the right to publicly express his opinion.

(2) Everyone has the right to freely express his religion or faith on his own or together with others, privately or publicly, by means of divine and religious services, by observing religious rites, or by participating in the teaching of religion.

(3) Churches and religious communities administer their own affairs. In particular, they constitute their own bodies, inaugurate their clergymen, organize the teaching of religion, and establish religious orders and other church institutions independently of state bodies.

(4) Conditions for exercising rights according to sections 1 to 3 can be limited only by law, if such a measure is unavoidable in a democratic society to protect public order, health, morality, or the rights and liberties of others.

Article 25. (1) The defense of the Slovak Republic is a matter of honor for each citizen.

(2) No one must be forced to perform military service if this runs counter to his conscience or religious belief. The details will be specified in a law.

Part Three: Political Rights

Article 26. (1) The freedom of speech and the right to information are guaranteed.

(2) Everyone has the right to express his views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press permits is not subject to licensing procedures. Enterprise in the fields of radio and television may be pegged to the awarding of an authorization from the state. The conditions will be specified by law.

(3) Censorship is banned.

(4) The freedom of speech and the right to seek out and spread information can be restricted by law if such a measure is unavoidable in a democratic society to protect the rights and liberties of others, of state security, of public order, or of public health and morality.

(5) State bodies and territorial self-administration bodies are under an obligation to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution will be specified by law.

Article 27. (1) The right of petition is guaranteed. Everyone has the right, alone or with others, to address requests, proposals, and complaints to state bodies and territorial self-administration bodies in matters of public or other common interest.

(2) A petition must not be used to call for the violation of basic rights and liberties.

(3) A petition must not interfere with the independence of a court.

Article 28. (1) The right to assemble peacefully is guaranteed.

(2) Conditions for exercising this right will be set out in a law in the event of assemblies in public places, if such a measure is unavoidable in a democratic society to protect the rights and liberties of others, public order, health and morality, property, or the security of the state. An assembly must not be made conditional on the issuance of an authorization by a state administration body.

Article 29. (1) The right to freely associate is guaranteed. Everyone has the right to associate with others in clubs, societies, or other associations.

(2) Citizens have the right to establish political parties and political movements and to associate in them.

(3) The enactment of rights according to sections 1 and 2 can be restricted only in cases specified by law, if this is unavoidable in a democratic society for reasons of state security, to protect public order, to forestall criminal acts, or to protect the rights and liberties of others.

(4) Political parties and political movements, as well as clubs, societies, and other associations are separated from the state.

Article 30. (1) Citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives.

(2) Elections must be held within deadlines that do not exceed the regular electoral period as defined by law.

(3) The right to vote is universal, equal, and direct and is exercised by means of secret ballot. Conditions for exercising the right to vote will be set out in a law.

(4) Citizens have access to elected and other public posts under equal conditions.

Article 31. The legal definition of all political rights and liberties and their interpretation and use must enable and protect the free competition of political forces in a democratic society.

Article 32. Citizens have the right to put up resistance to anyone who would eliminate the democratic order of human rights and basic liberties listed in this Constitution, if the activity of constitutional bodies and the effective use of legal means are rendered impossible.

Part Four: The Rights of National Minorities and Ethnic Groups

Article 33. Membership of any national minority or ethnic group must not be to anyone's detriment.

Article 34. (1) The comprehensive development of citizens representing national minorities or ethnic groups in the Slovak Republic is guaranteed, particularly the right to develop their own culture, together with other members of the minority or ethnic group, the right to disseminate and receive information in their mother tongue, the right to associate in national minority associations, and the right to set up and maintain educational and cultural institutions. Details will be set out in a law.

(2) In addition to the right to master the state language, citizens belonging to national minorities or ethnic groups also have, under conditions defined by law, a guaranteed

(a) right to education in their own language,

(b) right to use their language in dealings with the authorities,

(c) right to participate in the solution of affairs concerning national minorities and ethnic groups.

(3) The enactment of the rights of citizens belonging to national minorities and ethnic groups that are guaranteed in this Constitution must not be conducive to jeopardizing the sovereignty and territorial integrity of the Slovak Republic or to discrimination against its other inhabitants.

Part Five: Economic, Social, and Cultural Rights

Article 35. (1) Everyone has the right to a free choice of profession and to training for it, as well as the right to engage in entreprencurial or other gainful activity.

(2) Conditions and restrictions with regard to the execution of certain professions or activities can be specified by law.

(3) Citizens have the right to work. Citizens who are unable to exercise this right through no fault of their own are provided for materially by the state to an appropriate extent. The conditions will be defined by law.

(4) A different regulation of rights listed under sections 1 through 3 can be specified by law for foreign nationals.

Article 36. Employees have the right to equitable and adequate working conditions. The law guarantees, above all

(a) the right to remuneration for work done, sufficient to ensure the employee's dignified standard of living,

(b) protection against arbitrary dismissal and discrimination at the place of work,

(c) labor safety and the protection of health at work,

(d) the longest admissible working time,

(e) adequate rest after work,

(f) the shortest admissible period of paid leave,

(g) the right to collective bargaining.

Article 37. (1) Everyone has the right to freely associate with others in order to protect his economic and social interests.

(2) Trade union organizations are established independently of the state. It is inadmissible to limit the number of trade union organizations, in the same way as it is inadmissible to give some of them a preferential status, be it in an enterprise or a branch of the economy.

(3) The activity of trade union organizations and the founding and operation of other associations protecting economic and social interests can be restricted by law if such a measure is unavoidable in a democratic society to protect the security of the state, public order, or the rights and liberties of others.

(4) The right to strike is guaranteed. The conditions will be defined by law. This right does not extend to judges, prosecutors, members of the armed forces and armed corps, and members of the fire brigades.

Article 38. (1) Women, minors, and persons with impaired health are entitled to an enhanced protection of their health at work as well as to special working conditions.
(2) Minors and persons with impaired health are entitled to special protection in labor relations as well as to assistance in professional training.
(3) Details concerning rights listed in sections 1 and 2 will be set out in a law.
Article 39. (1) Citizens have the right to adequate material provision in old age, in the event of work disability, as well as after losing their provider.
(2) Everyone who is in material need is entitled to assistance necessary to ensure basic living conditions.
(3) Details concerning rights listed in sections 1 and 2 will be set out in a law.
Article 40. Everyone has a right to the protection of his health. Based on public insurance, citizens have the right to free health care and to medical supplies under conditions defined by law.
Article 41. (1) Marriage, parenthood, and the family are under the protection of the law. The special protection of children and minors is guaranteed.
(2) Special care, protection in labor relations, and adequate working conditions are guaranteed to women during the period of pregnancy.
(3) Children born in and out of wedlock enjoy equal rights.
(4) Child care and the upbringing of children are among the rights of parents; children have the right to parental care and upbringing. Parents' rights can be restricted and minors can be separated from their parents against their will only by means of a court ruling based on the law.
(5) Parents caring for children are entitled to assistance from the state.
(6) Details concerning rights listed in sections 1 through 5 will be set out in a law.
Article 42. (1) Everyone has the right to education. School attendance is compulsory. Its period and age limit will be defined by law.
(2) Citizens have the right to free education at primary and secondary schools and, based on their abilities and society's resources, also at higher educational establishments.
(3) Schools other than state schools may be established, and instruction in them provided, only under conditions defined by law. Such schools may charge a tuition fee.
(4) A law will specify under which conditions citizens who are engaged in studies are entitled to assistance from the state.
Article 43. (1) Freedom of scientific research and in art are guaranteed. The rights to the results of creative intellectual activity are protected by law.
(2) The right of access to the cultural heritage is guaranteed under conditions defined by law.

Part Six: The Right to the Protection of the Environment and the Cultural Heritage

Article 44. (1) Everyone has the right to an auspicious environment.
(2) Everyone is obliged to protect and enhance the environment and the cultural heritage.

(3) No one must endanger or damage the environment, natural resources, and the cultural heritage beyond the extent established by law.
(4) The state looks after an economical use of natural resources, ecological balance, and effective environmental care.
Article 45. Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of its condition.

Part Seven: The Right to Protection by the Court and Other Legal Protection

Article 46. (1) Everyone may claim by the established legal procedure his right to an independent and impartial court hearing and, in cases designated by law, to another body of the Slovak Republic.
(2) Anyone who claims to have been deprived of his rights by a decision of a public administration body may appeal to the court for it to reexamine the lawfulness of that decision, unless specified otherwise by law. The reexamination of decisions concerning basic rights and liberties must not, however, be excluded from the court's authority.
(3) Everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court or another state or public administration body, or as a result of an incorrect official procedure.
(4) Conditions and details concerning court and other legal protection will be set out in a law.
Article 47. (1) Everyone has the right to refuse to testify if, by doing so, he might expose himself or a person close to him to the risk of criminal prosecution.
(2) Everyone has the right to legal assistance in court proceedings or proceedings before other state or public administration bodies. He has this right from the very start of the proceedings, under conditions defined by law.
(3) All participants in proceedings according to section 2 are equal.
(4) Anyone who declares that he does not have a command of the language in which the proceedings according to section 2 are conducted has the right to an interpreter.
Article 48. (1) No one must be removed from the jurisdiction of his law-assigned judge. The jurisdiction of the court is established by law.
(2) Everyone has the right to have his case tried in public, without needless procrastination, and in his presence and to deliver his opinion on all pieces of evidence. The public can be excluded only in cases specified by law.
Article 49. Only the law can establish which conduct constitutes a criminal act and what punishment or other form of deprivation of rights or property may be inflicted upon those who committed it.
Article 50. (1) Only the court shall decide on guilt and punishment for criminal acts.
(2) Every defendant is considered innocent until the court establishes his guilt by means of a legally valid verdict.
(3) The accused has the right to be granted the time and opportunity to prepare his defense, either himself or through a defense counsel.

(4) The defendant has the right to refuse to testify and must not be denied this right under any circumstances.
(5) No one must be made criminally liable for a deed for which he has already been sentenced or of which he has already been acquitted in a legally valid manner. This principle does not rule out the application of extraordinary corrective means in harmony with the law.
(6) The criminal liability of a deed is assessed, and punishment is meted out, according to the law valid at the time when the offense was committed. A more recent law will be applied if it is more favorable for the perpetrator.

Part Eight: Common Provisions for Chapters One and Two

Article 51. The rights listed under Article 35, Article 36, Article 37, item 4, Articles 38 through 42, and Articles 44 through 46 of this Constitution can be claimed only within the limits of the laws that execute those provisions.
Article 52. (1) Wherever the term "citizen" is used in Chapters One and Two of this Constitution, this is understood to mean citizen of the Slovak Republic.
(2) Foreign nationals enjoy in the Slovak Republic basic human rights and liberties guaranteed by this Constitution, unless these are expressly granted only to citizens.
(3) Wherever the term "citizen" is used in previous legal regulations, this is understood to mean every person, wherever this concerns the rights and liberties that this Constitution extends regardless of citizenship.
Article 53. The Slovak Republic grants asylum to foreign nationals persecuted for upholding political rights and liberties. Asylum may be denied to those who acted at variance with basic human rights and liberties. Details will be defined by law.
Article 54. The law may restrict the right of judges and prosecutors to engage in entrepreneurial and other activity and the right listed under Article 29, item 2; the right of employees of state administration bodies and territorial self-administration bodies in designated functions listed under Article 37, item 4; and the rights of members of armed forces and armed corps listed under Articles 27 and 28, if these are related to the execution of their duties. The law may restrict the right to strike for persons in professions that are vital for the protection of life and health.

Chapter Three

Part One: The Economy of the Slovak Republic

Article 55. (1) The economy of the Slovak Republic is based on the principles of a socially and ecologically oriented market economy.
(2) The Slovak Republic protects and promotes economic competition. Details will be set out in a law.
Article 56. The Slovak Republic establishes a bank of issue. Details will be set out in a law.

Article 57. The Slovak Republic is a customs territory.
Article 58. (1) The financial management of the Slovak Republic is administered by its state budget. The state budget is adopted by means of a law.
(2) State budget revenues, the rules of budget economy, and the relationship between the state budget and the budgets of territorial units will be set out in a law.
(3) Special purpose funds linked to the state budget of the Slovak Republic are established by law.
Article 59. (1) There exist state and local taxes and fees.
(2) Taxes and fees may be levied by law or on the basis of a law.

Part Two: Supreme Control Office of the Slovak Republic

Article 60. The Supreme Control Office of the Slovak Republic is an independent body carrying out control of the management of budgetary resources, state property, property rights, and state claims.
Article 61. (1) The Supreme Control Office is headed by a chairman. The chairman and deputy chairmen of the Supreme Control Office are elected and recalled by the National Council of the Slovak Republic.
(2) Any citizen of the Slovak Republic who may be elected to the National Council of the Slovak Republic may be elected chairman of the Supreme Control Office.
(3) The same person may be elected chairman of the Supreme Control Office for a maximum of two consecutive five-year terms.
(4) The posts of chairman and deputy chairmen of the Supreme Control Office are incompatible with any other post in state bodies, territorial self-administration bodies, or bodies of juridical persons engaged in entrepreneurial activity.
Article 62. The Supreme Control Office submits reports on the results of its inquiries to the National Council of the Slovak Republic at least once a year and whenever requested to do so by the National Council of the Slovak Republic.
Article 63. The sphere of competence, powers, and internal organizational structure of the Supreme Control Office will be set out in a law.

Chapter Four: Territorial Self-Administration

Article 64. (1) The community is the basic element of territorial self-administration.
(2) The community is an independent territorial and administrative unit of the Slovak Republic comprising persons who are permanently resident on its territory.
(3) The self-administration of higher territorial units and their bodies will be established by law.
Article 65. (1) The community is a juridical person that, under conditions set out in a law, independently manages its own property and financial resources.
(2) The community finances its needs, first and foremost, from its own revenues, as well as from state subsidies. The law specifies which taxes and fees represent communities' revenue. State subsidies may be claimed only within the limits of the law.

Article 66. The community has the right to pool its resources with those of other communities in the interest of ensuring matters of common interest.

Article 67. The community decides independently in matters of local self-administration. Duties and restrictions may be imposed on it only by the law. Territorial self-administration is enacted at meetings of community residents, by means of a local referendum, or through community bodies.

Article 68. The community may issue generally binding decrees in matters of local self-administration.

Article 69. (1) Community bodies are

(a) the community representative body

(b) the mayor.

(2) The community representative body is composed of deputies to the community representative body. Elections of deputies to community representative bodies are held by secret ballot, on the basis of a general, equal, and direct right to vote.

(2) The mayor is elected by citizens of the community by secret ballot, on the basis of a general, equal, and direct right to vote. The mayor of a community constitutes the community's executive body. He executes community administration and represents the community outwardly.

Article 70. The prerequisites for a community to be declared a town, and the method of doing so, will be defined by law, which will also designate the names of town bodies.

Article 71. (1) The execution of designated tasks of local state administration can be transferred by law to the community. The cost of the execution of state administration transferred in this manner will be covered by the state.

(2) In executing state administration, the community may, on the basis of the law, issue decrees that are generally binding within its area of jurisdiction, if empowered to do so by the law. The execution of state administration transferred to the community is steered by law and controlled by the Government. Details will be specified in a law.

Chapter Five: Legislative Power

Part One: The National Council of the Slovak Republic

Article 72. The National Council of the Slovak Republic is the sole constituent and legislative body of the Slovak Republic.

Article 73. (1) The National Council of the Slovak Republic has 150 deputies who are elected for a four-year period.

(2) Deputies are representatives of citizens. They execute their mandate personally according to their conscience and conviction and are not bound by orders.

Article 74. (1) Deputies are elected by secret ballot in general, equal, and direct elections.

(2) A citizen who has the right to vote, has reached the age of 21, and is permanently resident on the territory of the Slovak Republic can be elected deputy.

(3) Details concerning the election of deputies will be set out in a law.

Article 75. (1) The deputy is sworn in at the first meeting of the National Council of the Slovak Republic in which he participates, by taking the following oath: "I promise by my honor and conscience to be faithful to the Slovak Republic. I will fulfill my duties in the interest of its citizens. I will observe the Constitution and other laws and work toward their translation into life."

(2) Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

Article 76. The validity of the election of deputies is verified by the National Council of the Slovak Republic.

Article 77. (1) The post of deputy is incompatible with the post of president, judge, prosecutor, member of the Police Corps, member of the Prison Guard Corps, and professional soldier.

(2) If a deputy is appointed a member of the Government of the Slovak Republic, his mandate as a deputy does not cease while he executes the government post, but is just not being exercised.

Article 78. (1) A deputy cannot be made criminally liable because of his voting in the National Council of the Slovak Republic or its bodies, which applies also to the period after the expiry of his mandate. For statements made in the National Council of the Slovak Republic or its bodies while discharging the functions of a deputy, a deputy is answerable to the disciplinary powers of the National Council of the Slovak Republic.

(2) No criminal or disciplinary proceedings can be initiated against a deputy, and he cannot be taken into custody, without the consent of the National Council of the Slovak Republic. If the National Council of the Slovak Republic denies its consent, prosecution is ruled out forever.

(3) If a deputy has been caught and detained while committing a criminal offense, the relevant authority is obliged to report this immediately to the chairman of the National Council of the Slovak Republic. Unless the Mandate and Immunity Committee of the National Council of the Slovak Republic gives its consent to the detainment, the deputy must be released immediately.

Article 79. A deputy may refuse to testify in matters about which he learned while discharging his office, even after he ceases to be a deputy.

Article 80. (1) A deputy may address an interpellation to the Government of the Slovak Republic, a member of the Government of the Slovak Republic, or the head of another central body of state administration concerning matters within their jurisdiction. The deputy must receive a reply within 30 days.

(2) The reply to an interpellation shall become the subject of a debate in the National Council of the Slovak Republic that may be linked with a vote of confidence.

Article 81. (1) A deputy may surrender the post of deputy.

(2) The mandate of a deputy shall expire if the deputy is sentenced in a legally valid way for a particularly grave, deliberate criminal act.

Article 82. (1) The National Council of the Slovak Republic holds permanent sessions.

(2) The constituent meeting of the National Council of the Slovak Republic is called by the president of the Slovak Republic within 30 days after the announcement of

election results. If he fails to do so, the National Council of the Slovak Republic convenes on the 30th day after the announcement of the election results.

(3) The National Council of the Slovak Republic may interrupt its session by means of a resolution. The length of interruption must not exceed four months in a year. The chairman, deputy chairmen, and bodies of the National Council of the Slovak Republic perform their duties while the National Council of the Slovak Republic is in recess.

(4) While the session is interrupted, the chairman of the National Council of the Slovak Republic may call a meeting of the National Council of the Slovak Republic even prior to the set date. He will call a meeting whenever requested to do so by the Government of the Slovak Republic or by at least one-fifth of the deputies.

(5) The session of the National Council of the Slovak Republic ends with the expiration of the electoral term or with its dissolution.

Article 83. (1) Meetings of the National Council of the Slovak Republic are called by its chairman.

(2) The chairman of the National Council of the Slovak Republic shall call a meeting of the National Council of the Slovak Republic also when requested to do so by at least one-fifth of its deputies. In that case he will call a meeting within seven days.

(3) Meetings of the National Council of the Slovak Republic are public.

(4) Nonpublic meetings can be held only in cases specified by law or on the basis of a decision by three-fifths of all deputies of the National Council of the Slovak Republic.

Article 84. (1) The National Council of the Slovak Republic has a quorum if more than one-half of all its deputies are present.

(2) For a resolution of the National Council of the Slovak Republic to be valid, it must be passed by more than one-half of the deputies present, unless specified otherwise by this Constitution.

(3) The agreement of at least a three-fifths majority of all deputies is required to pass and amend the Constitution and constitutional laws, to elect and recall the president, and to declare war on another state.

Article 85. At the request of the National Council of the Slovak Republic or its body, a member of the Government of the Slovak Republic or head of another body of state administration must participate in its meeting or in the meeting of its body.

Article 86. The jurisdiction of the National Council of the Slovak Republic comprises, above all:

(a) deciding upon the Constitution and constitutional and other laws and controlling compliance with them,

(b) electing and recalling the president of the Slovak Republic by secret ballot,

(c) approving by means of a constitutional law a treaty on the Slovak Republic's entering into an alliance with other states and on its abrogation of such a treaty,

(d) deciding on proposals to call a referendum,

(e) voicing consent, prior to ratification, with the conclusion of international political treaties, international economic treaties of a general nature, as well as with international treaties whose execution requires the passing of a law,

(f) establishing ministries and other state administration bodies by means of law,

(g) discussing the policy statement of the Government of the Slovak Republic, controlling the Government's activity, and passing a vote of confidence in the Government or its members,

(h) approving the state budget, checking on its fulfillment, and approving the state closing account,

(i) discussing basic domestic, international, economic, social, and other political issues,

(j) electing judges, the chairman and deputy chairman of the Supreme Court of the Slovak Republic, the chairman and deputy chairman of the Constitutional Court of the Slovak Republic, and the chairman and deputy chairman of the Supreme Control Office of the Slovak Republic,

(k) deciding on the declaration of war if the Slovak Republic is attacked or as a result of commitments arising from international treaties on common defense against aggression,

(l) expressing consent to sending armed forces outside the territory of the Slovak Republic.

Article 87. (1) Bills can be tabled by committees of the National Council of the Slovak Republic, deputies, and the Government of the Slovak Republic.

(2) Laws of the National Council of the Slovak Republic are signed by the chairman of the National Council of the Slovak Republic, the president of the Slovak Republic, and the prime minister of the Slovak Republic.

(3) If the president of the Slovak Republic returns a constitutional or other law with comments, the National Council of the Slovak Republic will discuss the constitutional or other law again and, in the event of its approval, such a law must be promulgated.

(4) The president of the Slovak Republic will return a law with comments, in line with section 3, whenever requested to do so by the Government of the Slovak Republic.

(5) A law becomes valid with its promulgation. Details will be set out in a law.

Article 88. (1) The motion to pass a vote of no-confidence in the Government of the Slovak Republic or a member of it will be discussed by the National Council of the Slovak Republic if requested by at least one-fifth of its deputies.

(2) The consent of more than 50 percent of all deputies is required to pass a vote of no-confidence in the Government of the Slovak Republic or a member of it.

Article 89. (1) The chairman of the National Council of the Slovak Republic is elected and recalled by the National Council of the Slovak Republic by secret ballot, by more than 50 percent of the votes of all deputies. The chairman is accountable only to the National Council of the Slovak Republic.

(2) The chairman of the National Council of the Slovak Republic

(a) calls and chairs meetings of the National Council of the Slovak Republic,

(b) signs the Constitution, constitutional laws, and other laws,

(c) takes the oath from deputies of the National Council of the Slovak Republic,

(d) takes the oath from the president of the Slovak Republic,

(e) takes the oath from judges, the chairman of the Supreme Court of the Slovak Republic, and the chairman of the Constitutional Court of the Slovak Republic,

(f) calls elections to the National Council of the Slovak Republic.

(3) The chairman of the National Council of the Slovak Republic remains in office after the electoral period expires, until the National Council of the Slovak Republic elects a new chairman.

Article 90. (1) The deputy chairmen of the National Council of the Slovak Republic act as substitutes for the chairman. They are elected and recalled by secret ballot by the National Council of the Slovak Republic, by the votes of more than 50 percent of all deputies. The deputy chairmen of the National Council of the Slovak Republic are accountable to the National Council of the Slovak Republic.

(2) The provision of Article 89, item 3, applies also to the deputy chairmen of the National Council of the Slovak Republic.

Article 91. The activity of the National Council of the Slovak Republic is steered and organized by the chairman and deputy chairmen.

Article 92. (1) The National Council of the Slovak Republic establishes from the ranks of deputies committees as its bodies having an initiating and control role and it elects their chairmen by secret ballot.

(2) The deliberations of the National Council of the Slovak Republic and its committees are regulated by law.

Part Two: The Referendum

Article 93. (1) A referendum will be used to confirm a constitutional law on entering into an alliance with other states or on withdrawing from that alliance.

(2) A referendum can be used to decide also on other important issues of public interest.

(3) Basic rights and liberties, taxes, levies, and the state budget cannot be the subject of a referendum.

Article 94. Every citizen of the Slovak Republic who has the right to vote in elections the National Council of the Slovak Republic is entitled to participate in the referendum.

Article 95. The referendum is called by the president of the Slovak Republic if requested by a petition signed by a minimum of 350,000 citizens or on the basis of a resolution of the National Council of the Slovak Republic, within 30 days after the receipt of the citizens' petition or the resolution of the National Council of the Slovak Republic.

Article 96. (1) The motion to pass a resolution of the National Council of the Slovak Republic on calling a referendum can be tabled by deputies of the National Council of the Slovak Republic or by the Government of the Slovak Republic.

(2) The referendum will be held within 90 days after it is called by the president of the Slovak Republic.

Article 97. (1) A referendum must not be held within 90 days prior to elections to the National Council of the Slovak Republic.

(2) A referendum may be held on the day of elections to the National Council of the Slovak Republic.

Article 98. (1) The results of the referendum are valid if more than 50 percent of

eligible voters participated in it and if the decision was endorsed by more than 50 percent of the participants in the referendum.

(2) The proposals adopted in the referendum will be promulgated by the National Council of the Slovak Republic in the same way as it promulgates laws.

Article 99. (1) The National Council of the Slovak Republic can amend or annul the result of a referendum by means of a constitutional law, but it may not do so earlier than three years after the result of the referendum came into effect.

(2) A referendum on the same issue can be repeated after three years at the earliest.

Article 100. A law will establish the manner in which the referendum will be carried out.

Chapter Six: Executive Power

Part One: The President of the Slovak Republic

Article 101. (1) The president is the head of state of the Slovak Republic.

(2) The president of the Slovak Republic is elected by the National Council of the Slovak Republic by secret ballot for a period of five years.

(3) A majority of three-fifths of all deputies' votes is required for the president to be elected.

Article 102—The President

(a) represents the Slovak Republic outwardly and concludes and ratifies international treaties. He may delegate to the Government of the Slovak Republic or, with the Government's consent, to individual members of the Slovak Republic, the conclusion of international treaties that do not require approval by the National Council of the Slovak Republic,

(b) receives and accredits ambassadors,

(c) calls the constituent meeting of the National Council of the Slovak Republic,

(d) may dissolve the National Council of the Slovak Republic if the policy statement of the Government of the Slovak Republic is not approved three times within six months after the elections. Prior to dissolving the National Council of the Slovak Republic, the president is obliged to hear the standpoint of the chairman of the National Council of the Slovak Republic. New elections will be called by the chairman of the National Council of the Slovak Republic within 30 days,

(e) signs laws,

(f) appoints and recalls the prime minister and other members of the Government of the Slovak Republic, entrusts them with the management of ministries, and accepts their resignation. Recalls the prime minister and other members of the Government in the cases listed in Articles 115 and 116,

(g) appoints and recalls the heads of central bodies and higher-level state officials in cases specified by law, appoints university professors and rectors, appoints and promotes generals,

(h) awards distinctions, unless he empowers another body to perform this task,

(i) grants amnesty and pardon, lowers punishments meted out by criminal courts, issues orders not to initiate or not to continue criminal proceedings, and nullifies punishments,
(j) acts as supreme commander of the armed forces,
(k) declares martial law at the recommendation of the Government of the Slovak Republic and declares war on the basis of a decision of the National Council of the Slovak Republic, if the Slovak Republic is attacked or as a result of commitments arising from international treaties on common defense against aggression,
(l) declares a state of emergency on the basis of a constitutional law,
(m) calls referendums,
(n) can return to the National Council of the Slovak Republic constitutional and other laws with comments. He can do so within 15 days after their approval,
(o) presents to the National Council of the Slovak Republic reports on the state of the Slovak Republic and on important political issues, submits to it draft laws and proposals for other measures.
(p) has the right to be present at meetings of the National Council of the Slovak Republic,
(r) [no (q) in accordance with Slovak usage] has the right to be present at meetings of the Government of the Slovak Republic, to chair them, and to demand reports from the Government or its members.

Article 103. (1) Any citizen of the Slovak Republic who is eligible to vote and has reached the age of 35 can be elected president.
(2) The same person can be elected president in two consecutive electoral periods at the most.
(3) The election of the president will be held in the last 60 days of the acting president's period of office. Should the office of the president become vacant prior to the end of the electoral period, the election of a new president will be held within 30 days.
(4) Should a deputy of the National Council of the Slovak Republic, member of the Government of the Slovak Republic, judge, prosecutor, member of the armed forces of another armed corps, or member of the Supreme Control Office of the Slovak Republic be elected president, he will cease executing his previous function from the day of his election.
(5) The president must not perform any other paid function, profession, or entrepreneurial activity and must not be a member of the body of a juridical person engaged in entrepreneurial activity.

Article 104. (1) The president is sworn in by the chairman of the National Council of the Slovak Republic, before the National Council of the Slovak Republic, by taking the following oath: "I promise on my honor and conscience to be faithful to the Slovak Republic. I will attend to the well-being of the Slovak nation and the national minorities and ethnic groups living in the Slovak Republic. I will discharge my duties in the interest of citizens and will uphold and defend the Constitution and other laws."
(2) Refusing to take this oath, or taking it with reservations, results in the invalidity of the election of the president.

Article 105. (1) If no president is elected, or if the office of the president becomes vacant before a new president is elected or before the newly elected president has been

sworn in, or if the president is unable to perform his function for serious reasons, the execution of the post of the president falls upon the Government of the Slovak Republic, with the exception of presidential powers listed in Article 102, letters (d) through (g). In that case the Government can entrust the prime minister with executing some presidential powers. The supreme command of the armed forces is also transferred to the prime minister in this period.

(2) If the president is unable to perform his function for more than one year, the National Council of the Slovak Republic will recall him from office and will elect a new president for a regular term of office.

Article 106. The National Council of the Slovak Republic can recall the president from his post if the president is engaged in activity directed against the sovereignty and territorial integrity of the Slovak Republic or in activity aimed at eliminating the Slovak Republic's democratic constitutional system. In such cases, the motion to recall the president may be tabled by more than one-half of all deputies. The consent of at least a three-fifths majority of all deputies is required for the president to be recalled.

Article 107. The president can be prosecuted only on charges of high treason. The indictment against the president is filed by the National Council of the Slovak Republic. The Constitutional Court of the Slovak Republic decides on the indictment.

Part Two: The Government of the Slovak Republic

Article 108. The Government of the Slovak Republic is the supreme body of executive power.

Article 109. (1) The Government consists of the prime minister, deputy prime ministers, and ministers.

(2) A Government member must not exercise the mandate of a deputy or be a judge.

(3) A Government member must not perform any other paid office, profession, or entrepreneurial activity and must not be a member of the body of a juridical person engaged in entrepreneurial activity.

Article 110. (1) The prime minister is appointed and recalled by the president of the Slovak Republic.

(2) Any citizen of the Slovak Republic who can be elected to the National Council of the Slovak Republic can be appointed prime minister.

Article 111. At the recommendation of the prime minister, the president of the Slovak Republic appoints and recalls other members of the Government and entrusts them with the management of ministries. The president can appoint as deputy prime minister and minister any citizen who can be elected to the National Council of the Slovak Republic.

Article 112. Members of the Government are sworn in by the president of the Slovak Republic and take the following oath: "I swear by my honor and conscience to be faithful to the Slovak Republic. I will discharge my duties in the interest of the citizens. I will uphold the Constitution and other laws and work toward their translation into life."

Article 113. Within 30 days after its appointment, the Government is obliged to appear

before the National Council of the Slovak Republic, to present to it its program, and to request the expression of its confidence.

Article 114. (1) The Government is accountable for the execution of its duties to the National Council of the Slovak Republic, which can pass a vote of no-confidence in it at any time.

(2) The Government can at any time request the National Council of the Slovak Republic to pass a vote of confidence in it.

(3) The Government can link the vote on the adoption of a law or on another issue with a vote of confidence in the Government.

Article 115. (1) The president of the Slovak Republic will recall the Government if the National Council of the Slovak Republic passes a vote of no-confidence in it or if it turns down the Government's request to pass a vote of confidence in it.

(2) If the president of the Slovak Republic accepts the Government's resignation, he will entrust it with the execution of its duties until a new Government is appointed.

Article 116. (1) A Government member is accountable for the execution of his duties to the National Council of the Slovak Republic.

(2) A Government member may submit his resignation to the president of the Slovak Republic.

(3) The National Council of the Slovak Republic may pass a vote of no-confidence also in an individual Government member. In this case, the president of the Slovak Republic will recall the Government member in question.

(4) The proposal to recall a Government member may be submitted to the president of the Slovak Republic also by the prime minister.

(5) If the prime minister submits his resignation, the entire Government will submit its resignation.

(6) If the National Council of the Slovak Republic passes a vote of no-confidence in the prime minister, the president of the Slovak Republic will recall him. The recalling of the prime minister results in the stepping down of the Government.

(7) If the president of the Slovak Republic accepts the resignation of, or recalls, a member of the Government, he will determine which Government member will temporarily be charged with the management of the department previously administered by the Government member whose resignation he accepted.

Article 117. The Government will always submit its resignation after the constituent meeting of a newly elected National Council of the Slovak Republic; however, the Government executes its duties until a new Government is formed.

Article 118. (1) The Government has a quorum if more than one-half of its members are present.

(2) The majority of votes of all Government members is needed to pass a Government resolution.

Article 119. The Government as a body decides on

(a) draft laws,

(b) Government decrees,

(c) the Government's program and its implementation,

(d) principal measures concerning the implementation of the Slovak Republic's economic and social policy,

(e) drafts of the state budget and the state closing account,

(f) international treaties of the Slovak Republic,

(g) principal questions of domestic and foreign policy,

(h) submitting a draft law of the National Council of the Slovak Republic or some other important measure to the public for discussion,

(i) requesting the passing of a vote of confidence,

(j) awarding amnesty for misdemeanors,

(k) appointing and recalling state officials in cases specified by law,

(l) other matters specified by law.

Article 120. (1) The Government may issue decrees in order to execute laws within their limits.

(2) Government decrees are signed by the prime minister.

(3) A Government decree must be promulgated in a manner that will be specified by law.

Article 121. The Government has the right to award amnesty for misdemeanors. Details will be set out in a law.

Article 122. Central bodies of state administration and local bodies of state administration are established by means of a law.

Article 123. Ministries and other bodies of state administration may, on the basis of laws and within their limits, issue generally binding legal regulations if empowered to do so by the law. These generally binding legal regulations are promulgated in a manner that will be specified by law.

Chapter Seven: Judicial Power

Part One: The Constitutional Court of the Slovak Republic

Article 124. The Constitutional Court of the Slovak Republic is an independent judicial body charged with protecting constitutionality.

Article 125. The Constitutional Court decides on the compatibility of

(a) laws with the Constitution and with constitutional laws,

(b) decrees issued by the Government and generally binding legal regulations issued by ministries and other central bodies of state administration with the Constitution and constitutional and other laws,

(c) generally binding decrees issued by territorial self-administration bodies with the Constitution and laws,

(d) generally binding legal regulations issued by local state administration bodies with the Constitution, laws, and other generally binding legal regulations,

(e) generally binding legal regulations with international treaties promulgated in a manner established for the promulgation of laws.

Article 126. The Constitutional Court decides on jurisdiction disputes among central

bodies of state administration, unless the law specifies that these disputes are decided by another state body.

Article 127. The Constitutional Court decides on complaints filed against legally valid decisions on central state administration bodies, local state administration bodies, and territorial self-administration bodies violating basic rights and liberties of citizens, unless decisions on the protection of these rights and liberties are within the jurisdiction of another court.

Article 128. (1) The Constitutional Court provides an interpretation of constitutional laws in disputed matters. The conditions will be specified in a law.

(2) The Constitutional Court does not assume a stand on matters concerning the compatibility of draft laws and the drafts of other generally binding legal regulations with the Constitution and constitutional laws.

Article 129. (1) The Constitutional Court decides on complaints filed against the decision to verify or not to verify the mandate of a deputy of the National Council of the Slovak Republic.

(2) The Constitutional Court decides on the constitutionality and legitimacy of elections to the National Council of the Slovak Republic and territorial self-administration bodies.

(3) The Constitutional Court decides on complaints filed against referendum results.

(4) The Constitutional Court decides whether the decision to disband or suspend the activity of a political party or a political movement was in harmony with constitutional and other laws.

(5) The Constitutional Court decides on high treason charges filed by the National Council of the Slovak Republic against the president of the Slovak Republic.

Article 130. (1) The Constitutional Court initiates proceedings on the basis of a proposal by

(a) at least one-fifth of deputies of the National Council of the Slovak Republic,

(b) the president of the Slovak Republic,

(c) the Government of the Slovak Republic,

(d) the court,

(e) the general prosecutor,

(f) in cases, listed under Article 127, involving anyone whose rights are to become the subject of inquiry.

(2) A law will specify who is entitled to submit a proposal to initiate proceedings according to Article 129.

(3) The Constitutional Court can also initiate proceedings at the suggestion of juridical or other persons objecting to the violation of their rights.

Article 131. Matters listed under Article 107; Article 125, items (a) and (b); Article 129, items 2 and 4; Article 136, item 2; and Article 138, items 2 and 3, as well as matters concerning the arrangement of the Constitutional Court's internal affairs are decided by plenary meetings of the Constitutional Court.

Article 132. (1) If the Constitutional Court establishes by its verdict that legal regulations listed under Article 125 are mutually incompatible, the relevant regulations, their

parts, or, as the case may be, some of their provisions cease to be effective. Within six months after the announcement of the Constitutional Court's ruling, the bodies that issued those regulations must bring them into harmony with the Constitution and constitutional laws. If the incompatibility concerns regulations listed under Article 125, item (b), they must also bring them into harmony with other laws, and if the incompatibility concerns regulations listed under Article 125, item (c), they also must bring them into harmony with other laws, international treaties, Slovak Government decrees, and generally binding legal regulations issued by ministries and other central state administration bodies. If they fail to do so, such regulations or, as the case may be, their parts or provisions cease to be effective six months after the announcement of the ruling.

(2) Constitutional Court rulings issued according to item 1 immediately above are promulgated in a manner established for the promulgation of laws.

Article 133. There exists no legal recourse against a ruling of the Constitutional Court.

Article 134. (1) The Constitutional Court consists of 10 judges.

(2) Constitutional Court judges are appointed for a period of seven years by the president of the Slovak Republic out of 20 persons proposed to him by the National Council of the Slovak Republic.

(3) Any citizen of the Slovak Republic who may be elected to the National Council of the Slovak Republic, has reached the age of 40, is a law school graduate, and has been practicing law for at least 15 years may be appointed judge of the Constitutional Court.

(4) A judge of the Constitutional Court is sworn in by the president of the Slovak Republic by taking the following oath: "I promise on my honor and conscience that I will protect the inviolability of the natural rights of man and civic rights, protect the principles of the law-governed state, abide by the Constitution and constitutional laws, and decide independently and impartially, according to my best conscience."

(5) A judge of the Constitutional Court takes up office upon taking his oath.

Article 135. The Constitutional Court is headed by its chairman, who is substituted for by the deputy chairman. The chairman and deputy chairman are appointed by the president of the Slovak Republic from among judges of the Constitutional Court.

Article 136. (1) Members of the Constitutional Court enjoy immunity in the same way as deputies of the National Council of the Slovak Republic.

(2) The consent to the criminal prosecution of a judge of the Constitutional Court, or to taking him into custody, is given by the Constitutional Court.

(3) The Constitutional Court gives consent to the criminal prosecution or to the taking into custody of the chairman and deputy chairman of the Supreme Court of the Slovak Republic.

Article 137. (1) If an appointed judge of the Constitutional Court is a member of a political party or a political movement, he must surrender his membership prior to taking his oath.

(2) Judges of the Constitutional Court execute their post as their profession. The execution of this post is incompatible with

(a) entrepreneurial or another economic or gainful activity, with the exception of the administration of their own property and scientific, teaching, literary, and artistic activity,
(b) a post or contract of employment in another state body.

(3) The judge's mandate as a deputy and his membership of the Government of the Slovak Republic expire on the day when he takes up office.

Article 138. (1) A judge of the Constitutional Court can surrender the post of judge of the Constitutional Court.

(2) The president of the Slovak Republic can recall a judge of the Constitutional Court on the basis of a legally valid sentence passed for a deliberate criminal offense or on the basis of a disciplinary decision by the Constitutional Court passed because of a deed that is incompatible with the execution of his duties in the Constitutional Court.

(3) The president of the Slovak Republic will recall a judge of the Constitutional Court if the Constitutional Court announces that the judge has not been participating in Constitutional Court proceedings for over a year or if the judge of the Constitutional Court was barred from practicing law by a court verdict.

Article 139. If a judge of the Constitutional Court surrenders the post of judge of the Constitutional Court or if he is recalled from it, the president of the Slovak Republic will appoint, out of two persons proposed by the National Council of the Slovak Republic, another judge of the Constitutional Court for a new term of office.

Article 140. Details on the organization of the Constitutional Court, on the manner of Constitutional Court proceedings, and on the status of its judges will be specified by law.

Part Two: Courts of the Slovak Republic

Article 141. (1) Justice in the Slovak Republic is administered by independent and impartial courts.

(2) Justice at all levels is administered independently of other state bodies.

Article 142. (1) Courts decide on civil law and criminal law matters and reexamine the legitimacy of administrative bodies' decisions.

(2) Court decisions are made by tribunals of judges, unless the law specifies that the matter is to be decided by a single judge. A law will specify in which cases decisions by tribunals of judges are attended by associate judges from the ranks of citizens.

(3) Verdicts are proclaimed in the name of the Slovak Republic. They are always proclaimed publicly.

Article 143. (1) The system of courts consists of the Supreme Court of the Slovak Republic and other courts.

(2) The detailed arrangement of the court system, the courts' sphere of competence and organization, and the manner of court proceedings will be set out in a law.

Article 144. (1) Judges are independent in making decisions and bound solely by the law.

(2) In cases specified by the Constitution or the law, judges are bound also by international treaties.

(3) If the court is of the opinion that another generally binding legal regulation is at variance with the law, it will interrupt its deliberations and propose that a proceeding before the Constitutional Court be initiated. The finding of the Constitutional Court of the Slovak Republic is binding for it, as well as for other courts.

Article 145. (1) Judges are elected by the National Council of the Slovak Republic at the recommendation of the Government of the Slovak Republic for four years. After the expiry of this term, at the recommendation of the Government of the Slovak Republic, the National Council of the Slovak Republic elects judges for an unlimited period of time.

(2) The chairman and deputy chairmen of the Supreme Court are elected by the National Council of the Slovak Republic from the ranks of judges of the Supreme Court for a period of five years, for a maximum of two consecutive terms.

Article 146. A judge may surrender his post.

Article 147. (1) The National Council of the Slovak Republic will recall a judge

(a) on the basis of a legally valid sentence passed for a deliberate criminal offense,

(b) on the basis of a disciplinary court decision made on account of a deed that is incompatible with the execution of his post.

(2) The National Council of the Slovak Republic may recall a judge

(a) if his state of health does not allow him over the long term, for a period of at least one year, to properly discharge his duties as judge,

(b) if he has reached the age of 65.

(3) Prior to recalling a judge from his post, the National Council of the Slovak Republic will ask the appropriate disciplinary court for its standpoint.

Article 148. (1) The status, rights, and duties of judges will be defined by law.

(2) The manner of appointing associate judges will be defined by law.

Chapter Eight: The Prosecutor's Office of the Slovak Republic

Article 149. The Prosecutor's Office of the Slovak Republic protects rights and the legally protected interests of natural and juridical persons and the state.

Article 150. The Prosecutor's Office is headed by the prosecutor general. The prosecutor general is appointed and recalled by the president of the Slovak Republic at the recommendation of the National Council of the Slovak Republic.

Article 151. Details on appointing and recalling prosecutors and on their rights and duties, as well as on the organization of the Prosecutor's Office, will be set out in a law.

Chapter Nine: Transitional and Final Provisions

Article 152. (1) Constitutional laws, other laws, and generally binding legal regulations remain in force in the Slovak Republic unless they conflict with this Constitution. They can be amended and abolished by the relevant bodies of the Slovak Republic.

(2) Laws and other generally binding legal regulations issued in the CSFR become invalid on the 90th day after the publication of the ruling on their invalidity by the

Constitutional Court of the Slovak Republic. This ruling must be published in a manner established for the promulgation of laws.

(3) Decisions on the invalidity of legal regulations are made by the Constitutional Court of the Slovak Republic at the proposal of persons listed in Article 130.

(4) The interpretation and application of constitutional laws, other laws, and generally binding legal regulations must be in harmony with this Constitution.

Article 153. Rights and duties arising from international treaties by which the CSFR is bound are being transferred to the Slovak Republic to an extent established by a CSFR constitutional law or by an agreement between the Slovak Republic and the Czech Republic.

Article 154. (1) The Slovak National Council elected according to Article 103 of Constitutional Law No. 143/1968 on the Czechoslovak Federation in the wording of subsequent amendments will, in line with this Constitution, execute its duties as the National Council of the Slovak Republic. The electoral term of the National Council of the Slovak Republic is counted from the day of elections to the Slovak National Council.

(2) The Government of the Slovak Republic appointed according to Article 122, section 1, letter (a) of Constitutional Law No. 143/1968 on the Czechoslovak Federation in the wording of subsequent amendments is regarded as a government appointed according to this Constitution.

(3) The chairman of the Supreme Court of the Slovak Republic and the prosecutor-general of the Slovak Republic, who have been appointed to their posts according to previous legal regulations, retain their posts until an appointment according to this Constitution is made.

(4) Judges of Slovak Republic courts appointed to their posts according to previous legal regulations are regarded as appointed to their posts according to this Constitution, without any time limit.

Article 155. The following are being abolished:

(1) Constitutional Law of the Slovak National Council No. 50/1990 on the name, state emblem, national flag, state seal, and national anthem of the Slovak Republic.

(2) Constitutional Law of the Slovak National Council No. 79/1990 on the number of Slovak National Council deputies; on the text of the oath of Slovak National Council deputies, members of the Slovak Republic Government, and national committee deputies, and on the Slovak National Council electoral period.

(3) Constitutional Law of the Slovak National Council No. 7/1992 on the Constitutional Court of the Slovak Republic.

Article 156. This Constitution of the Slovak Republic comes into force on the day of its promulgation, with the exception of Article 3, item 2; Article 23, item 4, as regards the deportation or extradition of a citizen to another state; Article 54; Article 84, item 3, as regards declaration of war on another state; Article 86, items (k) and (l); Article 102, item (g), as regards the appointment of university professors and rectors and the appointment and promotion of generals, and items (j) and (k); Article 152, item 1, second sentence, as regards constitutional laws, other laws, and generally binding legal

regulations issued by CSFR bodies, which will go into force simultaneously with the appropriate changes in the constitutional arrangement of the CSFR, in line with this Constitution.

Addenda. The Constitution of the Slovak Republic as a whole went into force on the day of its promulgation, that is, on Thursday, 3 September 1992, with the exception of the following provisions:

Article 3, section 2 (the borders of the Slovak Republic can be changed only by a constitutional law),

Article 23, section 4 (as regards the deportation or extradition of a citizen to another state),

Article 54 (the law may restrict the right of judges and prosecutors to engage in entrepreneurial and other activity and the right listed under Article 29 section 2, concerning the right to establish political parties and to associate in them; the right of employees of state administration bodies and territorial self-administration bodies in designated functions listed under Article 37 section 4, which refers to the right to strike; and the rights of members of armed forces and armed corps listed under Article 27, concerning the right of petition, and Article 28, concerning the right of assembly, if these are related to the execution of their duties. The law may restrict the right to strike for persons in professions that are vital for the protection of life and health),

Article 84, section 3 (as regards the declaration of war on another state),

Article 86 (item k): (deciding on the declaration of war if the Slovak Republic is attacked or as a result of commitments arising from international treaties on common defense against aggression),

(Item l): (expressing consent with sending armed forces outside the territory of the Slovak Republic),

Article 102 (item g): (as regards the appointment of university professors and rectors and the appointment and promotion of generals),

(Item j) (the president is the chief commander of armed forces),

(Item k) (declares martial law at the recommendation of the Government of the Slovak Republic and declares war on the basis of a decision of the National Council of the Slovak Republic, if the Slovak Republic is attacked or as a result of commitments arising from international treaties about common defense against aggression),

Article 152, section 1, second sentence: (as regards constitutional laws, other laws, and generally binding legal regulations issued by CSFR bodies, which will go into force simultaneously with the appropriate changes in the constitutional arrangement of the CSFR, in line with this Constitution).

CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS

(Adopted at the Seventh [Special] Session of the Supreme Soviet of the USSR, Ninth Convocation, On October 7, 1977, Novosti Press Agency Publishing House Moscow, 1985)

Constitution (Fundamental Law) of the Union of Soviet Socialist Republics

The Great October Socialist Revolution, made by the workers and peasants of Russia under the leadership of the Communist Party headed by Lenin, overthrew capitalist and landowner rule, broke the fetters of oppression, established the dictatorship of the proletariat, and created the Soviet state, a new type of state, the basic instrument for defending the gains of the revolution and for building socialism and communism. Humanity thereby began the epoch-making turn from capitalism to socialism.

After achieving victory in the Civil War and repulsing imperialist intervention, the Soviet government carried through far-reaching social and economic transformations, and put an end once and for all to exploitation of man by man, antagonisms between classes, and strife between nationalities. The unification of the Soviet Republics in the Union of Soviet Socialist Republics multiplied the forces and opportunities of the peoples of the country in the building of socialism. Social ownership of the means of production and genuine democracy for the working masses were established. For the first time in the history of mankind a socialist society was created.

The strength of socialism was vividly demonstrated by the immortal feat of the Soviet people and their Armed Forces in achieving their historic victory in the Great Patriotic War. This victory consolidated the influence and international standing of the Soviet Union and created new opportunities for growth of the forces of socialism, national liberation, democracy, and peace throughout the world.

Continuing their creative endeavors, the working people of the Soviet Union have ensured rapid, all-round development of the country and steady improvement of the socialist system. They have consolidated the alliance of the working class, collective-farm peasantry, and people's intelligentsia, and friendship of the nations and nationalities of the USSR. Sociopolitical and ideological unity of Soviet society, in which the working class is the leading force, has been achieved. The aims of the dictatorship of the proletariat having been fulfilled, the Soviet state has become a state of the whole people. The leading role of the Communist Party, the vanguard of all the people, has grown.

In the USSR a developed socialist society has been built. At this stage, when socialism is developing on its own foundations, the creative forces of the new system and the advantages of the socialist way of life are becoming increasingly evident, and the working people are more and more widely enjoying the fruits of their great revolutionary gains.

It is a society in which powerful productive forces and progressive science and culture have been created, in which the well-being of the people is constantly rising, and more and more favorable conditions are being provided for the all-round development of the individual.

It is a society of mature socialist social relations, in which, on the basis of the drawing together of all classes and social strata and of the juridical and factual equality of all its nations and nationalities and their fraternal cooperation, a new historical community of people has been formed—the Soviet people.

It is a society of high organizational capacity, ideological commitment, and consciousness of the working people, who are patriots and internationalists.

It is a society in which the law of life is concern of all for the good of each and concern of each for the good of all.

It is a society of true democracy, the political system of which ensures effective management of all public affairs, ever more active participation of the working people in running the state, and the combining of citizen's real rights and freedoms with their obligations and responsibility to society.

Developed socialist society is a natural, logical stage on the road to communism.

The supreme goal of the Soviet state is the building of a classless communist society in which there will be public, communist self-government. The main aims of the people's socialist state are: to lay the material and technical foundation of communism, to perfect socialist social relations and transform them into communist relations, to mold the citizen of communist society, to raise the people's living and cultural standards, to safeguard the country's security, and to further the consolidation of peace and development of international cooperation.

The Soviet people, guided by the ideas of scientific communism and true to their revolutionary traditions, relying on the great social, economic, and political gains of socialism, striving for the further development of socialist democracy, taking into account the international position of the USSR as part of the world system of socialism, and conscious of their internationalist responsibility, preserving continuity of the ideas and principles of the first Soviet Constitution of 1918, the 1924 Constitution of the USSR and the 1936 Constitution of the USSR, hereby affirm the principle of the social structure and policy of the USSR, and define the rights, freedoms and obligations of citizens, and the principles of the organization of the socialist state of the whole people, and its aims, and proclaim these in this Constitution.

I. Principles of the Social Structure and Policy of the USSR

Chapter 1: The Political System

Article 1. The Union of Soviet Socialist Republics is a socialist state of the whole people, expressing the will and interests of the workers, peasants, and intelligentsia, the working people of all the nations and nationalities of the country.

Article 2. All power in the USSR belongs to the people. The people exercise state power through Soviets of People's Deputies, which constitute the political foundation of the USSR. All other state bodies are under the control of, and accountable to, the Soviets of People's Deputies.

Article 3. The Soviet state is organized and functions on the principle of democratic centralism, namely the electiveness of all bodies of state authority from the lowest to the highest, their accountability to the people, and the obligation of lower bodies to observe the decisions of higher ones. Democratic centralism combines central leadership with local initiative and creative activity and with the responsibility of each state body and official for the work entrusted to them.

Article 4. The Soviet state and all its bodies function on the basis of socialist law, ensure the maintenance of law and order, and safeguard the interests of society and the rights and freedoms of citizens. State organizations, public organizations and officials shall observe the Constitution of the USSR and Soviet laws.

Article 5. Major matters of state shall be submitted to nationwide discussion and put to a popular vote (referendum).

Article 6. The leading and guiding force of Soviet society and the nucleus of its political system, of all state organizations and public organizations, is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people. The Communist Party, armed with Marxism-Leninism, determines the general perspectives of the development of society and the course of the home and foreign policy of the USSR, directs the great constructive work of the Soviet people, and imparts a planned, systematic and theoretically substantiated character to their struggle for the victory of communism. All party organizations shall function within the framework of the Constitution of the USSR.

Article 7. Trade unions, the All-Union Leninist Young Communist League cooperatives, and other public organizations, participate, in accordance with the aims laid down in their rules, in managing state and public affairs, and in deciding political, economic, and social and cultural matters.

Article 8. Work collectives take part in discussing and deciding state and public affairs, in planning production and social development, in training and placing personnel, and in discussing and deciding matters pertaining to the management of enterprises and institutions, and the use of funds allocated both for developing production and for social and cultural purposes and financial incentives. Work collectives promote socialist emulation, the spread of progressive methods of work, and the strengthening of production discipline, educate their members in the spirit of communist morality, and

strive to enhance their political consciousness and raise their cultural level and skills and qualifications.

Article 9. The principal direction in the development of the political system of Soviet society is the extension of socialist democracy, namely ever broader participation of citizens in managing the affairs of society and the state, continuous improvement of the machinery of state, heightening of the activity of public organizations, strengthening of the system of people's control, consolidation of the legal foundations of the functioning of the state and of public life, greater openness and publicity, and constant responsiveness to public opinion.

Chapter 2: The Economic System

Article 10. The foundation of the economic system of the USSR is socialist ownership of the means of production in the form of state property (belonging to all the people) and collective-farm and cooperative property. Socialist ownership also embraces the property of trade unions and other public organizations which they require to carry out their purposes under these rules. The state protects socialist property and provides conditions for its growth. No one has the right to use socialist property for personal gain or other selfish ends.

Article 11. State property, i.e., the common property of the Soviet people, is the principal form of socialist property. The land, its minerals, waters, and forests are the exclusive property of the state. The state owns the basic means of production in industry, construction, and agriculture; means of transport and communication; the banks; the property of state-run trade organizations and public utilities, and other state-run undertakings; most urban housing; and other property necessary for state purposes.

Article 12. The property of collective farms and other cooperative organizations, and of their joint undertakings, comprises the means of production and other assets which they require for the purposes laid down in their rules. The land held by collective farms is secured to them for their free use in perpetuity. The state promotes development of collective-farm and cooperative property and its approximation to state property. Collective farms, like other land users, are obliged to make effective and thrifty use of the land and to increase its fertility.

Article 13. Earned income forms the basis of the personal property of Soviet citizens. The personal property of citizens of the USSR may include articles of everyday use, personal consumption and convenience, the implements and other objects of a smallholding, a house, and earned savings. The personal property of citizens and the right to inherit it are protected by the state. Citizens may be granted the use of plots of land, in the manner prescribed by law, for a subsidiary smallholding (including the keeping of livestock and poultry), for fruit and vegetable growing or for building an individual dwelling. Citizens are required to make rational use of the land allotted to them. The state, and collective farms provide assistance to citizens in working their smallholdings. Property owned or used by citizens shall not serve as a means of deriving unearned income or be employed to the detriment of the interests of society.

Article 14. The source of the growth of social wealth and of the well-being of the people, and of each individual, is the labor, free from exploitation, of Soviet people. The state exercises control over the measure of labor and of consumption in accordance with the principle of socialism: "From each according to his ability, to each according to his work." It fixes the rate of taxation on taxable income. Socially useful work and its results determine a person's status in society. By combining material and moral incentives and encouraging innovation and a creative attitude to work, the state helps transform labor into the prime vital need of every Soviet citizen.

Article 15. The supreme goal of social production under socialism is the fullest possible satisfaction of the people's growing material and cultural and intellectual requirements. Relying on the creative initiative of working people, socialist emulation, and scientific and technological progress, and by improving the forms and methods of economic management, the state ensures growth of the productivity of labor, raising of the efficiency of production and of the quality of work, and dynamic, planned, proportionate development of the economy.

Article 16. The economy of the USSR is an integral economic complex comprising all the elements of social production, distribution, and exchange on its territory. The economy is managed on the basis of state plans for economic and social development, with due account of the sectoral and territorial principles, and by combining centralized direction with the managerial independence and initiative of individual and amalgamated enterprises and other organizations, for which active use is made of management accounting, profit, cost, and other economic levers and incentives.

Article 17. In the USSR, the law permits individual labor in handicrafts, farming, the provision of services for the public, and other forms of activity based exclusively on the personal work of individual citizens and members of their families. The state makes regulations for such work to ensure that it serves the interest of society.

Article 18. In the interests of the present and future generations, necessary steps are taken in the USSR to protect and make scientific, rational use of the land and its mineral and water resources, and the plant and animal kingdoms, to preserve the purity of air and water, ensure reproduction of natural wealth, and improve the human environment.

Chapter 3: Social Development and Culture

Article 19. The social basis of the USSR is the unbreakable alliance of the workers, peasants, and intelligentsia. The state helps enhance the social homogeneity of society, namely the elimination of class differences and of the essential distinctions between town and country and between mental and physical labor, and the all-round development and drawing together of all the nations and nationalities of the USSR.

Article 20. In accordance with the communist ideal—"The free development of each is the condition of the free development of all"—the state pursues the aim of giving citizens more and more real opportunities to apply their creative energies, abilities, and talents, and to develop their personalities in every way.

Article 21. The state concerns itself with improving working conditions, safety and

labor protection and the scientific organization of work, and with reducing and ultimately eliminating all arduous physical labor through comprehensive mechanization and automation of production processes in all branches of the economy.

Article 22. A program is being consistently implemented in the USSR to convert agricultural work into a variety of industrial work, to extend the network of educational, cultural, and medical institutions, and of trade, public catering, service and public utility facilities in rural localities, and transform hamlets and villages into well-planned and well-appointed settlements.

Article 23. The state pursues a steady policy of raising people's pay levels and real incomes through increases in productivity. In order to satisfy the needs of Soviet people more fully, social consumption funds are created. The state, with the broad participation of public organizations and work collectives, ensures the growth and just distribution of these funds.

Article 24. In the USSR, state systems of health protection, social security, trade and public catering, communal services and amenities, and public utilities operate and are being extended. The state encourages cooperatives and other public organizations to provide all types of services for the population. It encourages the development of mass physical culture and sport.

Article 25. In the USSR there is a uniform system of public education, which is being constantly improved, that provides general education and vocational training for citizens, serves the communist education and intellectual and physical development of the youth, and trains them for work and social activity.

Article 26. In accordance with society's needs, the state provides for planned development of science and the training of scientific personnel and organizes the introduction of the results of research in the economy and other spheres of life.

Article 27. The state concerns itself with protecting, augmenting and making extensive use of society's cultural wealth for the moral and aesthetic education of the Soviet people, for raising their cultural level. In the USSR, development of the professional, amateur and folk arts is encouraged in every way.

Chapter 4: Foreign Policy

Article 28. The USSR steadfastly pursues a Leninist policy of peace and stands for strengthening of the security of nations and broad international cooperation. The foreign policy of the USSR is aimed at ensuring international conditions favorable for building communism in the USSR, safeguarding the state interests of the Soviet Union, consolidating the positions of world socialism, supporting the struggle of peoples for national liberation and social progress, preventing wars of aggression, achieving universal and complete disarmament, and consistently implementing the principle of the peaceful coexistence of states with different social systems. In the USSR war propaganda is banned.

Article 29. The USSR's relations with other states are based on observance of the following principles: sovereign equality; mutual renunciation of the use or threat of force; inviolability of frontiers; territorial integrity of states; peaceful settlement of

disputes; nonintervention in internal affairs; respect for human rights and fundamental freedoms; the equal rights of peoples and their right to decide their own destiny; cooperation among states; and fulfillment in good faith of obligations arising from the generally recognized principles and rules of international law, and from the international treaties signed by the USSR.

Article 30. The USSR, as part of the world system of socialism and of the socialist community, promotes and strengthens friendship, cooperation, and comradely mutual assistance with other socialist countries on the basis of the principle of socialist internationalism, and takes an active part in socialist economic integration and the socialist international division of labor.

Chapter 5: Defense of the Socialist Motherland

Article 31. Defense of the Socialist Motherland is one of the most important functions of the state, and is the concern of the whole people. In order to defend the gains of socialism, the peaceful labor of the Soviet people, and the sovereignty and territorial integrity of the state, the USSR maintains armed forces and has instituted universal military service. The duty of the Armed Forces of the USSR to the people is to provide reliable defense of the Socialist Motherland and to be in constant combat readiness, guaranteeing that any aggressor is instantly repulsed.

Article 32. The state ensures the security and defense capability of the country, and supplies the Armed Forces of the USSR with everything necessary for that purpose. The duties of state bodies, public organizations, officials, and citizens in regard to safeguarding the country's security and strengthening its defense capacity are defined by the legislation of the USSR.

II. The State and the Individual

Chapter 6: Citizenship of the USSR/Equality of Citizens' Rights

Article 33. Uniform federal citizenship is established for the USSR. Every citizen of a Union Republic is a citizen of the USSR. The grounds and procedure for acquiring or forfeiting Soviet citizenship are defined by the Law on Citizenship of the USSR. When abroad, citizens of the USSR enjoy the protection and assistance of the Soviet state.

Article 34. Citizens of the USSR are equal before the law, without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, domicile, or other status. The equal rights of citizens of the USSR are guaranteed in all fields of economic, political, social, and cultural life.

Article 35. Women and men have equal rights in the USSR. Exercise of these rights is ensured by according women equal access with men to education and vocational and professional training, equal opportunities in employment, remuneration, and promotion, and in social and political, and cultural activity, and by special labor and health protection measures for women; by providing conditions enabling mothers to work; by

legal protection and material and moral support for mothers and children, including paid leaves and other benefits for expectant mothers and mothers, and gradual reduction of working time for mothers with small children.

Article 36. Citizens of the USSR of different races and nationalities have equal rights. Exercise of these rights is ensured by a policy of all-round development and drawing together all the nations and nationalities of the USSR, by educating citizens in the spirit of Soviet patriotism and socialist internationalism, and by the possibility to use their native language and the languages of other peoples in the USSR. Any direct or indirect limitation of the rights of citizens or the establishment of direct or indirect privileges on grounds of race or nationality, and any advocacy of racial or national exclusiveness, hostility, or contempt, are punishable by law.

Article 37. Citizens of other countries and stateless persons in the USSR are guaranteed the rights and freedoms provided by law, including the right to apply to a court and other state bodies for the protection of their personal, property, family, and other rights. Citizens of other countries and stateless persons, when in the USSR, are obliged to respect the Constitution of the USSR and observe Soviet laws.

Article 38. The USSR grants the right of asylum to foreigners persecuted for defending the interests of the working people and the cause of peace, or for participation in the revolutionary and national liberation movement, or for progressive social and political, scientific, or other creative activity.

Chapter 7: The Basic Rights, Freedoms, and Duties of Citizens of the USSR

Article 39. Citizens of the USSR enjoy in full the social, economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and by Soviet laws. The socialist system ensures enlargement of the rights and freedoms of citizens and continuous improvement of their living standards as social, economic, and cultural development programs are fulfilled. Enjoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state, or infringe the rights of other citizens.

Article 40. Citizens of the USSR have the right to work (that is, to guaranteed employment and pay in accordance with the quantity and quality of their work, and not below the state-established minimum), including the right to choose their trade or profession and the type of job and work in accordance with their inclinations, abilities, training and education, with due account of the needs of society. This right is ensured by the socialist economic system, steady growth of productive forces, free vocational and professional training, improvement of skills, training in new trades or professions, and development of the systems of vocational guidance and job placement.

Article 41. Citizens of the USSR have the right to rest and leisure. This right is ensured by the establishment of a working week not exceeding 41 hours for workers and other employees, a shorter working day in a number of trades and industries, and shorter hours for night work; by the provision of paid annual holidays, weekly days of rest, extension of the network of cultural, educational, and health-building institutions, and the development on a mass scale of sport, physical culture, and camping and tourism;

by the provision of neighborhood recreational facilities, and of other opportunities for rational use of free time. The length of collective farmers' working and leisure time is established by their collective farms.

Article 42. Citizens of the USSR have the right to health protection. This right is ensured by free, qualified medical care provided by state health institutions; by extension of the network of therapeutic and health-building institutions; by the development and improvement of safety and hygiene in industry; by carrying out broad prophylactic measures; by measures to improve the environment; by special care for the health of the rising generation, including prohibition of child labor, excluding the work done by children as part of the school curriculum; and by developing research to prevent and reduce the incidence of disease and ensure citizens a long and active life.

Article 43. Citizens of the USSR have the right to maintenance in old age, in sickness, and in the event of complete or partial disability or loss of the breadwinner. The right is guaranteed by social insurance of workers and other employees and collective farmers; by allowances for temporary disability; by the provision by the state or by collective farms of retirement pensions, disability pensions, and pensions for loss of the breadwinner; by providing employment for the partially disabled; by care for the elderly and the disabled; and by other forms of social security.

Article 44. Citizens of the USSR have the rights to housing. This right is ensured by the development and upkeep of state and socially owned housing; by assistance for cooperative and individual house-building; by fair distribution, under public control, of the housing that becomes available through fulfillment of the program of building well-appointed dwellings, and by low rents and low charges for utility services. Citizens of the USSR shall take good care of the housing allocated to them.

Article 45. Citizens of the USSR have the right to education. This right is ensured by free provision of all forms of education, by the institution of universal, compulsory secondary education, and broad development of vocational, specialized secondary and higher education, in which instruction is oriented toward practical activity and production; by the development of extramural, correspondence, and evening courses; by the provision of state scholarships and grants and privileges for students; by the free issue of school textbooks; by the opportunity to attend a school where teaching is in the native language; and by the provision of facilities for self-education.

Article 46. Citizens of the USSR have the right to enjoy cultural benefits. This right is ensured by broad access to the cultural treasures of their own land and of the world that are preserved in state and other public collections; by the development and fair distribution of cultural and educational institutions throughout the country; by developing television and radio broadcasting and the publishing of books, newspapers and periodicals, and by extending free library service; and by expanding cultural exchanges with other countries.

Article 47. Citizens of the USSR, in accordance with the aims of building communism, are guaranteed freedom of scientific, technical, and artistic work. This freedom is ensured by broadening scientific research, encouraging invention and innovation, and developing literature and the arts. The state provides the necessary material con-

ditions for this and support for voluntary societies and unions of workers in the arts, organizes the introduction of inventions and innovations in production and other spheres of activity. The rights of authors, inventors and innovators are protected by the state.

Article 48. Citizens of the USSR have the right to take part in the management and administration of state and public affairs and in the discussion and adoption of laws and measures of All-Union and local significance. This right is ensured by the opportunity to vote and to be elected to Soviets of People's Deputies and other elective state bodies, to take part in nationwide discussions and referendums, in people's control, in the work of state bodies, public organizations, and local community groups, and in meetings at places of work or residence.

Article 49. Every citizen of the USSR has the right to submit proposals to state bodies and public organizations for improving their activity, and to criticize shortcomings in their work. Officials are obliged, within established time limits, to examine citizens' proposals and requests, to reply to them, and to take appropriate action. Persecution for criticism is prohibited. Persons guilty of such persecution shall be called to account.

Article 50. In accordance with the interests of the people and in order to strengthen and develop the socialist system, citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations. Exercise of these political freedoms is ensured by putting public buildings, streets and squares at the disposal of the working people and their organizations, by broad dissemination of information, and by the opportunity to use the press, television, and radio.

Article 51. In accordance with the aims of building communism, citizens of the USSR have the right to associate in public organizations that promote their political activity and initiative and satisfaction of their various interests. Public organizations are guaranteed conditions for successfully performing the functions defined in their rules.

Article 52. Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited. In the USSR, the church is separated from the state, and the school from the church.

Article 53. The family enjoys the protection of the state. Marriage is based on the free consent of the woman and the man; the spouses are completely equal in their family relations. The state helps the family by providing and developing a broad system of child-care institutions, by organizing and improving communal services and public catering, by paying grants on the birth of a child, by providing children's allowances and benefits for large families, and by other forms of family allowances and assistance.

Article 54. Citizens of the USSR are guaranteed inviolability of the person. No one may be arrested except by a court decision or on the warrant of a procurator.

Article 55. Citizens of the USSR are guaranteed inviolability of the home. No one may, without lawful grounds, enter a home against the will of those residing in it.

Article 56. The privacy of citizens, and of their correspondence, telephone conversations, and telegraphic communications is protected by law.

Article 57. Respect for the individual and protection of the rights and freedoms of citizens are the duty of all state bodies, public organizations, and officials. Citizens of the USSR have the right to protection by the courts against encroachments on their honor and reputation, life and health, and personal freedom and property.

Article 58. Citizens of the USSR have the right to lodge a complaint against the actions of officials, state bodies and public bodies. Complaints shall be examined according to the procedure and within the time limit established by law. Actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed against in a court in the manner prescribed by law. Citizens of the USSR have the right to compensation for damage resulting from unlawful actions by state organizations and public organizations, or by officials in the performance of their duties.

Article 59. Citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations. Citizens of the USSR are obliged to observe the Constitution of the USSR and Soviet laws, comply with the standards of socialist conduct, and uphold the honor and dignity of Soviet citizenship.

Article 60. It is the duty of, and matter of honor for, every able-bodied citizen of the USSR to work conscientiously in his chosen, socially useful occupation, and strictly to observe labor discipline. Evasion of socially useful work is incompatible with the principles of socialist society.

Article 61. Citizens of the USSR are obliged to preserve and protect socialist property. It is the duty of a citizen of the USSR to combat misappropriation and squandering of state and socially owned property and to make thrifty use of the people's wealth. Persons encroaching in any way on socialist property shall be punished according to the law.

Article 62. Citizens of the USSR are obliged to safeguard the interests of the Soviet state, and to enhance its power and prestige. Defense of the Socialist Motherland is the sacred duty of every citizen of the USSR. Betrayal of the Motherland is the gravest of crimes against the people.

Article 63. Military service in the ranks of the Armed Forces of the USSR is an honorable duty of Soviet citizens.

Article 64. It is the duty of every citizen of the USSR to respect the national dignity of other citizens, and to strengthen friendship of the nations and nationalities of the multinational Soviet state.

Article 65. A citizen of the USSR is obliged to respect the rights and lawful interests of other persons, to be uncompromising toward antisocial behavior, and to help maintain public order.

Article 66. Citizens of the USSR are obliged to concern themselves with the upbringing of children, to train them for socially useful work, and to raise them as worthy members of socialist society. Children are obliged to care for their parents and help them.

Article 67. Citizens of the USSR are obliged to protect nature and conserve its riches.

Article 68. Concern for the preservation of historical monuments and other cultural values is a duty and obligation of citizens of the USSR.

Article 69. It is the internationalist duty of citizens of the USSR to promote friendship and cooperation with peoples of other lands and help maintain and strengthen world peace.

III. The National-State Structure of the USSR

Chapter 8: The USSR—A Federal State

Article 70. The Union of Soviet Socialist Republics is an integral, federal, multinational state formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics. The USSR embodies the state unity of the Soviet people and draws all its nations and nationalities together for the purpose of jointly building communism.

Article 71. The Union of Soviet Socialist Republics unites: The Russian Soviet Federative Socialist Republic, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the Uzbek Soviet Socialist Republic, the Kazakh Soviet Socialist Republic, the Georgian Soviet Socialist Republic, the Azerbeijan Soviet Socialist Republic, the Lithuanian Soviet Socialist Republic, the Moldovian Soviet Socialist Republic, the Latvian Soviet Socialist Republic, the Kirghiz Soviet Socialist Republic, the Tajik Soviet Socialist Republic, the Armenian Soviet Socialist Republic, the Turkmen Soviet Socialist Republic, the Estonian Soviet Socialist Republic.

Article 72. Each Union Republic shall retain the right freely to secede from the USSR.

Article 73. The jurisdiction of the Union of Soviet Socialist Republics, as represented by its highest bodies of state authority and administration, shall cover:

1. the admission of new republics to the USSR; endorsement of the formation of new autonomous republics and autonomous regions within Union Republics;
2. determination of the state boundaries of the USSR and approval of changes in the boundaries between Union Republics;
3. establishment of the general principles for the organization and functioning of republican and local bodies of state authority and administration;
4. the insurance of uniformity of legislative norms throughout the USSR and establishment of the fundamentals of legislation of the Union of Soviet Socialist Republics and Union Republics;
5. pursuance of a uniform social and economic policy; direction of the country's economy; determination of the main lines of scientific and technological progress and the general measures for rational exploitation and conservation of natural resources; the drafting and approval of state plans for the economic and social development of the USSR, and endorsement of reports on their fulfillment;
6. the drafting and approval of the consolidated Budget of the USSR, and endorsement of the report on its execution; management of a single monetary and credit system; determi-

nation of the taxes and revenues forming the Budget of the USSR; and the formulation of prices and wages policy;

7. direction of the sectors of the economy, and of enterprises and amalgamations under Union jurisdiction, and general direction of industries under Union-Republican jurisdiction;

8. issues of war and peace, defense of the sovereignty of the USSR and safeguarding of its frontiers and territory, and organization of defense; direction of the Armed Forces of the USSR;

9. state security;

10. representation of the USSR in international relations; the USSR's relations with other states and with international organizations; establishment of the general procedure for, and coordination of, the relations of Union Republics with other states and with international organizations; foreign trade and other forms of external economic activity on the basis of state monopoly;

11. control over observance of the Constitution of the USSR, and insurance of conformity of the Constitutions of Union Republics to the Constitution of the USSR;

12. and settlement of other matters of All-Union importance.

Article 74. The laws of the USSR shall have the same force in all Union Republics. In the event of a discrepancy between a Union Republic law and an All-Union law, the law of the USSR shall prevail.

Article 75. The territory of the Union of Soviet Socialist Republics is a single entity and comprises the territories of the Union Republics. The sovereignty of the USSR extends throughout its territory.

Chapter 9: The Union Soviet Socialist Republic

Article 76. A Union Republic is a sovereign Soviet socialist state that has united with other Soviet Republics in the Union of Soviet Socialist Republics. Outside the spheres listed in Article 73 of the Constitution of the USSR, a Union Republic exercises independent authority on its territory. A Union Republic shall have its own Constitution conforming to the Constitution of the USSR with the specific features of the Republic being taken into account.

Article 77. Union Republics take part in decision-making in the Supreme Soviet of the USSR, the Presidium of the Supreme Soviet of the USSR, the Government of the USSR, and other bodies of the Union of Soviet Socialist Republics. A Union Republic shall ensure comprehensive economic and social development on its territory, facilitate exercise of the powers of the USSR on its territory, and implement the decisions of the highest bodies of state authority and administration of the USSR. In matters that come within its jurisdiction, a Union Republic shall coordinate and control the activity of enterprises, institutions, and organizations subordinate to the Union.

Article 78. The territory of a Union Republic may not be altered without its consent. The boundaries between Union Republics may be altered by mutual agreement of the Republics concerned, subject to ratification by the Union of Soviet Socialist Republics.

Article 79. A Union Republic shall determine its division into territories, regions, areas, and districts, and decide other matters relating to its administrative and territorial structure.

Article 80. A Union Republic has the right to enter into relations with other states, conclude treaties with them, exchange diplomatic and consular representatives, and take part in the work of international organizations.

Article 81. The sovereign rights of Union Republics shall be safeguarded by the USSR.

Chapter 10: The Autonomous Soviet Socialist Republic

Article 82. An Autonomous Republic is a constituent part of a Union Republic. In spheres not within the jurisdiction of the Union of Soviet Socialist Republics and the Union Republic, an Autonomous Republic shall deal independently with matters within its jurisdiction. An autonomous Republic shall have its own Constitution conforming to the Constitutions of the USSR and the Union Republic with the specific features of the Autonomous Republic being taken into account.

Article 83. An Autonomous Republic takes part in decision-making through the highest bodies of state authority and administration of the USSR and of the Union Republic, respectively, in matters that come within the jurisdiction of the USSR and the Union Republic. An Autonomous Republic shall ensure comprehensive economic and social development on its territory, facilitate exercise of the powers of the USSR and the Union Republic on its territory, and implement decisions of the highest bodies of state authority and administration of the USSR and the Union Republic. In matters within its jurisdiction, an Autonomous Republic shall coordinate and control the activity of enterprises, institutions, and organizations subordinate to the Union or the Union Republic.

Article 84. The territory of an Autonomous Republic may not be altered without its consent.

Article 85. The Russian Soviet Federative Socialist Republic includes the Bashkir, Buryat, Daghestan, Kabardin-Balkar, Kalmyk, Karelian, Komi, Mari, Mordovian, North Ossetian, Tatar, Tuva, Udmurt, Chechen-Ingush, Chuvash, and Yakut Autonomous Soviet Socialist Republics. The Uzbek Soviet Socialist Republic includes the Kara-Kalpak Autonomous Soviet Socialist Republic. The Georgian Soviet Socialist Republic includes the Abkhasian and Adzhar Autonomous Soviet Socialist Republics. The Azerbaijan Soviet Socialist Republic includes the Nakhichevan Autonomous Soviet Socialist Republic.

Chapter 11: The Autonomous Region and Autonomous Area

Article 86. An Autonomous Region is a constituent part of a Union Republic or Territory. The Law on an Autonomous Region, upon submission by the Soviet of People's Deputies of the Autonomous Region concerned, shall be adopted by the Supreme Soviet of the Union Republic.

Article 87. The Russian Soviet Federative Socialist Republic includes the Adygei, Gorno-Altai, Jewish, Karachai-Circassian, and Khakass Autonomous Regions. The Georgian Soviet Socialist Republic includes the South Ossetian Autonomous Region. The Azerbaijan Soviet Socialist Republic includes the Nagorno-Karabakh Autonomous Region. The Tajik Soviet Socialist Republic includes the Gorno-Badakhshan Autonomous Region.

Article 88. An autonomous Area is a constituent part of a Territory or Region. The Law on an Autonomous Area shall be adopted by the Supreme Soviet of the Union Republic concerned.

IV: Soviets of People's Deputies and Electoral Procedure

Chapter 12: The System of Soviets of People's Deputies and the Principles of Their Work

Article 89. The Soviets of People's Deputies, i.e., the Supreme Soviet of the USSR, the Supreme Soviets of Union Republics, the Supreme Soviets of Autonomous Republics, the Soviets of People's Deputies of Territories and Regions, the Soviets of People's Deputies of Autonomous Regions and Autonomous Areas, and the Soviets of People's Deputies of districts, cities, city districts, settlements and villages shall constitute a single system of bodies of state authority.

Article 90. The term of the Supreme Soviet of the USSR, the Supreme Soviets of Union Republics, and the Supreme Soviets of Autonomous Republics shall be five years. The term of local Soviets of People's Deputies shall be two and a half years. Elections to Soviets of People's Deputies shall be called not later than two months before the expiry of the term of the Soviet concerned.

Article 91. The most important matters within the jurisdiction of the respective Soviets of People's Deputies shall be considered and settled at their sessions. Soviets of People's Deputies shall elect standing commissions and form executive-administrative and other bodies accountable to them.

Article 92. Soviets of People's Deputies shall form people's control bodies combining state control with control by the working people at enterprises, collective farms, institutions, and organizations. People's control bodies shall check on the fulfillment of state plans and assignments, combat breaches of state discipline, localist tendencies, narrow departmental attitudes, mismanagement, extravagance and waste, red tape and bureaucracy, and help improve the working of the state machinery.

Article 93. Soviets of People's Deputies shall direct all sectors of state economic and social and cultural development, either directly or through bodies instituted by them, take decisions and ensure their execution, and verify their implementation.

Article 94. Soviets of People's Deputies shall function publicly on the basis of collective, free, constructive discussion and decision-making, of systematic reporting back to them and the people by their executive-administrative and other bodies, and of involving citizens on a broad scale in their work.

Chapter 13: The Electoral System

Article 95. Deputies to all Soviets shall be elected on the basis of universal, equal, and direct suffrage by secret ballot.

Article 96. Elections shall be universal: all citizens of the USSR who have reached the age of 18 shall have the right to vote and to be elected, with the exception of persons who have been certified insane. To be eligible for election to the Supreme Soviet of the USSR a citizen of the USSR must have reached the age of 21.

Article 97. Elections shall be equal: each citizen shall have one vote; all voters shall exercise the franchise on an equal footing.

Article 98. Elections shall be direct: deputies to all Soviets of People's Deputies shall be elected by direct vote.

Article 99. Voting at elections shall be secret: control over voters' exercise of the franchise is inadmissible.

Article 100. The following shall have the right to nominate candidates: branches and organizations of the Communist Party of the Soviet Union, trade unions, and the All-Union Leninist Young Communist League; cooperatives and other public organizations; work collectives, and meetings of servicemen in their military units. Citizens of the USSR and public organizations are guaranteed the right to free and all-round discussion of the political and personal qualities and competence of candidates, and the right to campaign for them at meetings, in the press, and on television and radio. The expenses involved in holding elections to Soviets of People's Deputies shall be met by the state.

Article 101. Deputies to Soviets of People's Deputies shall be elected by constituencies. A citizen of the USSR may not, as a rule, be elected to more than two Soviets of People's Deputies. Elections to the Soviets shall be conducted by electoral commissions consisting of representatives, and of meetings of servicemen in military units. The procedure for holding elections to Soviets of People's Deputies shall be defined by the laws of the USSR, and of Union and Autonomous Republics.

Article 102. Electors give mandates to their Deputies. The appropriate Soviets of People's Deputies shall examine electors' mandates, take them into account in drafting economic and social development plans and in drawing up the budget, organize implementation of the mandates, and inform citizens about it.

Chapter 14: People's Deputies

Article 103. Deputies are the plenipotentiary representatives of the people in the Soviets of People's Deputies. In the Soviets, Deputies deal with matters relating to state, economic, and social and cultural development, organize implementation of the decisions of the Soviets, and exercise control over the work of state bodies, enterprises, institutions and organizations. Deputies shall be guided in their activities by the interests of the state, and shall take the needs of their constituents into account and work to implement their electors' mandates.

Article 104. Deputies shall exercise their powers without discontinuing their regular

employment or duties. During sessions of the Soviet, and so as to exercise their powers as Deputies in other cases stipulated by law, Deputies shall be released from their regular employment or duties, with retention of their average earnings at their permanent place of work.

Article 105. A Deputy has the right to address inquiries to the appropriate state bodies and officials, who are obliged to reply to them at a session of the Soviet. Deputies have the right to approach any state or public body, enterprise, institution, or organization on matters arising from their work as Deputies and to take part in considering the questions raised by them. The heads of the state or public bodies, enterprises, institutions or organizations concerned are obliged to receive Deputies without delay and to consider their proposals within the time limit established by law.

Article 106. Deputies shall be ensured conditions for the unhampered and effective exercise of their rights and duties. The immunity of Deputies, and other guarantees of their activity as Deputies, are defined in the Law on the Status of Deputies and other legislative acts of the USSR and of Union and Autonomous Republics.

Article 107. Deputies shall report on their work and on that of the Soviet to their constituents, and to the work collectives and public organizations that nominated them. Deputies who have not justified the confidence of their constituents may be recalled at any time by decision of a majority of the electors in accordance with the procedure established by law.

V. Higher Bodies of State Authority and Administration of the USSR

Chapter 15: The Supreme Soviet of the USSR

Article 108. The highest body of state authority of the USSR shall be the Supreme Soviet of the USSR. The Supreme Soviet of the USSR is empowered to deal with all matters within the jurisdiction of the Union of Soviet Socialist Republics, as defined by this Constitution. The adoption and amendment of the Constitution of the USSR; admission of new Republics to the USSR; endorsement of the formation of new Autonomous Republics and Autonomous Regions; approval of the state plans for economic and social development, of the Budget of the USSR, and of reports on their execution; and the institution of bodies of the USSR accountable to it, are the exclusive prerogative of the Supreme Soviet of the USSR. Laws of the USSR shall be enacted by the Supreme Soviet of the USSR or by a nationwide vote (referendum) held by decision of the Supreme Soviet of the USSR.

Article 109. The Supreme Soviet of the USSR shall consist of two chambers: the Soviet of the Union and the Soviet of Nationalities. The two chambers of the Supreme Soviet of the USSR shall have equal rights.

Article 110. The Soviet of the Union and the Soviet of Nationalities shall have equal numbers of deputies. The Soviet of the Union shall be elected by constituencies with equal populations. The Soviet of Nationalities shall be elected on the basis of the

following representation: 32 deputies from each Union Republic, 11 deputies from each Autonomous Republic, five deputies from each Autonomous Region, and one deputy from each Autonomous Area. The Soviet of the Union and the Soviet of Nationalities, upon submission by the credentials commissions elected by them, shall decide on the validity of Deputies' credentials, and, in cases in which the election law has been violated, shall declare the election of the Deputies concerned null and void.

Article 111. Each chamber of the Supreme Soviet of the USSR shall elect a Chairman and four Vice Chairmen. The Chairmen of the Soviet of the Union and of the Soviet of Nationalities shall preside over the sittings of the respective chambers and conduct their affairs. Joint sittings of the chambers of the Supreme Soviet of the USSR shall be presided over alternately by the Chairman of the Soviet of the Union and the Chairman of the Soviet of Nationalities.

Article 112. Sessions of the Supreme Soviet of the USSR shall be convened twice a year. Special sessions shall be convened by the Presidium of the Supreme Soviet of the USSR at its discretion or on the proposal of a Union Republic, or of not less than one-third of the Deputies of one of the chambers. A session of the Supreme Soviet of the USSR shall consist of separate and joint sittings of the chambers, and of meetings of the standing commissions of the chambers or commissions of the Supreme Soviet of the USSR held between the sittings of the chambers. A session may be opened and closed at either separate or joint sittings of the chambers.

Article 113. The right to initiate legislation in the Supreme Soviet of the USSR is vested in the Soviet of the Union and the Soviet of Nationalities, the Presidium of the Supreme Soviet of the USSR, the Council of Ministers of the USSR, Union Republics through their highest bodies of state authority, commissions of the Supreme Soviet of the USSR and standing commissions of its chambers, Deputies of the Supreme Soviet of the USSR, the Supreme Court of the USSR, and the Procurator-General of the USSR. The right to initiate legislation is also vested in public organizations through their All-Union bodies.

Article 114. Bills and other matters submitted to the Supreme Soviet of the USSR shall be debated by its chambers at separate or joint sittings. Where necessary, a bill or other matter may be referred to one or more commissions for preliminary or additional consideration. A law of the USSR shall be deemed adopted when it has been passed in each chamber of the Supreme Soviet of the USSR by a majority of the total number of its Deputies. Decisions and other acts of the Supreme Soviet of the USSR are adopted by a majority of the total number of Deputies of the Supreme Soviet of the USSR. Bills and other very important matters of state may be submitted for nationwide discussion [*sic*] by a decision of the Supreme Soviet of the USSR or its Presidium taken on their own initiative or on the proposal of a Union Republic.

Article 115. In the event of a disagreement between the Soviet of the Union and the Soviet of Nationalities, the matter at issue shall be referred for settlement to a conciliation commission formed by the chambers on a parity basis, after which it shall be considered for a second time by the Soviet of the Union and the Soviet of Nationalities

at a joint sitting. If agreement is again not reached, the matter shall be postponed for debate at the next session of the Supreme Soviet of the USSR or submitted by the Supreme Soviet to a nationwide vote (referendum).

Article 116. Laws of the USSR and decisions and other acts of the Supreme Soviet of the USSR shall be published in the languages of the Union Republics over the signatures of the Chairman and Secretary of the Presidium of the Supreme Soviet of the USSR.

Article 117. A Deputy of the Supreme Soviet of the USSR has the right to address inquiries to the Council of Ministers of the USSR, and to Ministers and the heads of other bodies formed by the Supreme Soviet of the USSR. The Council of Ministers of the USSR, or the official to whom the inquiry is addressed, is obliged to give a verbal or written reply within three days at the given session of the Supreme Soviet of the USSR.

Article 118. A Deputy of the Supreme Soviet of the USSR may not be prosecuted, or arrested, or incur a court-imposed penalty, without the sanction of the Supreme Soviet of the USSR or, between its sessions, of the Presidium of the Supreme Soviet of the USSR.

Article 119. The Supreme Soviet of the USSR, at a joint sitting of its chambers, shall elect a Presidium of the Supreme Soviet of the USSR, which shall be a standing body of the Supreme Soviet of the USSR, accountable to it for all its work and exercising the functions of the highest body of state authority of the USSR between sessions of the Supreme Soviet, within the limits prescribed by the Constitution.

Article 120. The Presidium of the Supreme Soviet of the USSR shall be elected from among the Deputies and shall consist of a Chairman, First Vice Chairman, 15 Vice Chairmen (one from each Union Republic), a Secretary, and 21 members.

Article 121. The Presidium of the Supreme Soviet of the USSR shall:

1. name the date of elections to the Supreme Soviet of the USSR;
2. convene sessions of the Supreme Soviet of the USSR;
3. coordinate the work of the standing commissions of the chambers of the Supreme Soviet of the USSR;
4. ensure observance of the Constitution of the USSR and conformity of the Constitutions and laws of Union Republics to the Constitution and laws of the USSR;
5. interpret the laws of the USSR;
6. ratify and denounce international treaties of the USSR;
7. revoke decisions and ordinances of the Council of Ministers of the USSR and of the Councils of Ministers of Union Republics should they fail to conform to the law;
8. institute military and diplomatic ranks and other special titles; and confer the highest military and diplomatic ranks and other special titles;
9. institute orders and medals of the USSR, and honorific titles of the USSR; award orders and medals of the USSR; and confer honorific titles of the USSR;
10. grant citizenship of the USSR, and rule on matters of the renunciation or deprivation of citizenship of the USSR and of granting asylum;

11. issue All-Union acts of amnesty and exercise the right of pardon;

12. appoint and recall diplomatic representatives of the USSR to other countries and to international organizations;

13. receive the letters of credence and recall of the diplomatic representatives of foreign states accredited to it;

14. form the Council of Defense of the USSR and confirm its composition; appoint and dismiss the high command of the Armed Forces of the USSR;

15. proclaim martial law in particular localities or throughout the country in the interests of defense of the USSR;

16. order general or partial mobilization;

17. between sessions of the Supreme Soviet of the USSR, proclaim a state of war in the event of an armed attack on the USSR, or when it is necessary to meet international treaty obligations relating to mutual defense against aggression;

18. and exercise other powers vested in it by the Constitution and laws of the USSR.

Article 122. The Presidium of the Supreme Soviet of the USSR, between sessions of the Supreme Soviet of the USSR and subject to submission for its confirmation at the next session, shall:

1. amend existing legislative acts of the USSR when necessary;

2. approve changes in the boundaries between Union Republics;

3. form and abolish Ministries and State Committees of the USSR on the recommendation of the Council of Ministers of the USSR;

4. relieve individual members of the Council of Ministers of the USSR of their responsibilities and appoint persons to the Council of Ministers on the recommendation of the Chairman of the Council of Ministers of the USSR.

Article 123. The Presidium of the Supreme Soviet of the USSR promulgates decrees and adopts decisions.

Article 124. On expiry of the term of the Supreme Soviet of the USSR, the Presidium of the Supreme Soviet of the USSR shall retain its powers until the newly elected Supreme Soviet of the USSR has elected a new Presidium. The newly elected Supreme Soviet of the USSR shall be convened by the outgoing Presidium of the Supreme Soviet of the USSR within two months of the elections.

Article 125. The Soviet of the Union and the Soviet of Nationalities shall elect standing commissions from among the Deputies to make a preliminary review of matters coming within the jurisdiction of the Supreme Soviet of the USSR, to promote execution of the laws of the USSR and other acts of the Supreme Soviet of the USSR and its Presidium, and to check on the work of state bodies and organizations. The chambers of the Supreme Soviet of the USSR may also set up joint commissions on a parity basis. When it deems necessary, the Supreme Soviet of the USSR sets up commissions of inquiry and audit, and commissions on any other matter. All state and public bodies, organizations and officials are obliged to meet the requests of the commissions of the Supreme Soviet of the USSR and of its chambers, and submit the requisite materials and documents to them. The commissions' recommendations shall be subject to consideration by state and public bodies, institutions and organizations. The commissions

shall be informed, within the prescribed time limit, of the results of such consideration or of the action taken.

Article 126. The Supreme Soviet of the USSR shall supervise the work of all state bodies accountable to it. The Supreme Soviet of the USSR shall form a Committee of People's Control of the USSR to head the system of people's control. The organization and procedure of people's control bodies are defined by the Law on People's Control in the USSR.

Article 127. The procedure of the Supreme Soviet of the USSR and of its bodies shall be defined in the Rules and Regulations of the Supreme Soviet of the USSR and other laws of the USSR enacted on the basis of the Constitution of the USSR.

Chapter 16: The Council of Ministers of the USSR

Article 128. The Council of Ministers of the USSR, i.e., the Government of the USSR, is the highest executive and administrative body of state authority of the USSR.

Article 129. The Council of Ministers of the USSR shall be formed by the Supreme Soviet of the USSR at a joint sitting of the Soviet of the Union and the Soviet of Nationalities, and shall consist of the Chairman of the Council of Ministers of the USSR, First Vice Chairmen and Vice Chairmen, Ministers of the USSR, and Chairmen of State Committees of the USSR. The Chairmen of the Councils of Ministers of Union Republics shall be *ex officio* members of the Council of Ministers of the USSR. The Supreme Soviet of the USSR, on the recommendation of the Chairman of the Council of Ministers of the USSR, may include in the Government of the USSR the heads of other bodies and organizations of the USSR. The Council of Ministers of the USSR shall tender its resignation to a newly elected Supreme Soviet of the USSR at its first session.

Article 130. The Council of Ministers of the USSR shall be responsible and accountable to the Supreme Soviet of the USSR and, between sessions of the Supreme Soviet of the USSR, to the Presidium of the Supreme Soviet of the USSR. The Council of Ministers of the USSR shall report regularly on its work to the Supreme Soviet of the USSR.

Article 131. The Council of Ministers of the USSR is empowered to deal with all matters of state administration within the jurisdiction of the Union of Soviet Socialist Republics insofar as, under the Constitution, they do not come within the competence of the Supreme Soviet of the USSR or the Presidium of the Supreme Soviet of the USSR. Within its powers the Council of Ministers of the USSR shall:

1. ensure direction of economic, social and cultural development; draft and implement measures to promote the well-being and cultural development of the people, to develop science and engineering, to ensure rational exploitation and conservation of natural resources, to consolidate the monetary and credit system, to pursue uniform prices, wages, and a social security policy, and to organize state insurance and a uniform system of accounting and statistics; and organize the management of industrial, construction, and agricultural enterprises and amalgamations, transport and communications undertakings, banks, and other organizations and institutions of All-Union subordination;

2. draft current and long-term state plans for the economic and social development of the USSR and the Budget of the USSR, and submit them to the Supreme Soviet of the USSR; take measures to execute the state plans and Budget; and report to the Supreme Soviet of the USSR on the implementation of the plans and Budget;

3. implement measures to defend the interests of the state, protect socialist property and maintain public order, and guarantee and protect citizens' rights and freedoms;

4. take measures to ensure state security;

5. exercise general direction of the development of the Armed Forces of the USSR, and determine the annual contingent of citizens to be called up for active military service;

6. provide general direction in regard to relations with other states, foreign trade, and economic, scientific, technical, and cultural cooperation of the USSR with other countries; take measures to ensure fulfillment of the USSR's international treaties; and ratify and denounce intergovernmental international agreements;

7. and when necessary, form committees, central boards and other departments under the Council of Ministers of the USSR to deal with matters of economic, social and cultural development, and defense.

Article 132. A Presidium of the Council of Ministers of the USSR, consisting of the Chairman, the First Vice Chairmen, and Vice Chairmen of the Council of Ministers of the USSR, shall function as a standing body of the Council of Ministers of the USSR to deal with questions relating to guidance of the economy, and with other matters of state administration.

Article 133. The Council of Ministers of the USSR, on the basis of, and in pursuance of, the laws of the USSR and other decision of the Supreme Soviet of the USSR and its Presidium, shall issue decisions and ordinances and verify their execution. The decisions and ordinances of the Council of Ministers of the USSR shall be binding throughout the USSR.

Article 134. The Council of Ministers of the USSR has the right, in matters within the jurisdiction of the Union of Soviet Socialist Republics, to suspend execution of decisions and ordinances of the Councils of Minister of Union Republics, and to rescind acts of ministries and state committees of the USSR, and of the other bodies subordinate to it.

Article 135. The Council of Ministers of the USSR shall coordinate and direct the work of All-Union and Union-Republic ministries, state committees of the USSR, and other bodies subordinate to it. All-Union ministries and state committees of the USSR shall direct the work of the branches of administration entrusted to them, or exercise interbranch administration, throughout the territory of the USSR directly or through bodies set up by them. Union-Republican ministries and state committees of the USSR direct the work of the branches of administration entrusted to them, or exercise interbranch administration, as a rule, through the corresponding ministries and state committees, and other bodies of Union Republics, and directly administer individual enterprises and amalgamations of Union subordination. The procedure for transferring enterprises and amalgamations from Republic or local subordination to Union subordination shall be defined by the Presidium of the Supreme Soviet of the USSR.

Ministries and state committees of the USSR shall be responsible for the condition and development of the spheres of administration entrusted to them; within their competence, they issue orders and other acts on the basis of, and in execution of, the laws of the USSR and other decisions of the Supreme Soviet of the USSR and its Presidium, and of decisions and ordinances of the Council of Ministers of the USSR, and organize and verify their implementation.

Article 136. The competence of the Council of Ministers of the USSR and its Presidium, the procedure for their work, relationships between the Council of Ministers and other state bodies, and the list of All-Union and Union-Republican ministries and state committees of the USSR are defined, on the basis of the Constitution, in the Law on the Council of Ministers of the USSR.

VI. Basic Principles of the Structure of the Bodies of State Authority and Administration in Union Republics

Chapter 17: Higher Bodies of State Authority and Administration of a Union Republic

Article 137. The highest body of state authority of a Union Republic shall be the Supreme Soviet of that Republic. The Supreme Soviet of a Union Republic is empowered to deal with all matters within the jurisdiction of the Republic under the Constitutions of the USSR and the Republic. Adoption and amendment of the Constitution of Union Republic; endorsement of state plans for economic and social development, of the Republic's Budget, and of reports on their fulfillment; and the formation of bodies accountable to the Supreme Soviet of the Union Republic are the exclusive prerogative of that Supreme Soviet. Laws of a Union Republic shall be enacted by the Supreme Soviet of the Union Republic or by a popular vote (referendum) held [*sic*] by decision of the Republic's Supreme Soviet.

Article 138. The Supreme Soviet of a Union Republic shall elect a Presidium, which is a standing body of that Supreme Soviet and accountable to it for all its work. The composition and powers of the Presidium of the Supreme Soviet of a Union Republic shall be defined in the Constitution of the Union Republic.

Article 139. The Supreme Soviet of a Union Republic shall form a Council of Ministers of the Union Republic, i.e., the Government of that Republic, which shall be the highest executive and administrative body of state authority in the Republic. The Council of Ministers of a Union Republic shall be responsible and accountable to the Supreme Soviet of that Republic or, between sessions of the Supreme Soviet, to its Presidium.

Article 140. The Council of Ministers of a Union Republic issues decisions and ordinances on the basis of, and in pursuance of, the legislative acts of the USSR and of the Union Republic, and of decisions and ordinances of the Council of Ministers of the USSR, and shall organize and verify their execution.

Article 141. The Council of Ministers of a Union Republic has the right to suspend the

execution of decisions and ordinances of the Councils of Ministers of Autonomous Republics, to rescind the decisions and orders of the Executive Committees of Soviets of People's Deputies of Territories, Regions, and cities (i.e., cities under Republic jurisdiction) and of Autonomous Regions, and in Union Republics not divided into regions, of the Executive Committees of district and corresponding city Soviets of People's Deputies.

Article 142. The Council of Ministers of a Union Republic shall coordinate and direct the work of the Union-Republican and Republican ministries and of state committees of the Union Republic, and other bodies under its jurisdiction. The Union-Republican ministries and state committees of a Union Republic shall direct the branches of administration entrusted to them, or exercise interbranch control and shall be subordinate to both the Council of Ministers of the Union Republic and the corresponding Union-Republican ministry or state committee of the USSR. Republican ministries and state committees shall direct the branches of administration entrusted to them, or exercise interbranch control, and shall be subordinate to the Council of Ministers of the Union Republic.

Chapter 18: Higher Bodies of State Authority and Administration of an Autonomous Republic

Article 143. The highest body of state authority of an Autonomous Republic shall be the Supreme Soviet of that Republic. Adoption and amendment of the Constitution of an Autonomous Republic; endorsement of state plans for economic and social development, and of the Republic's Budget; and the formation of bodies accountable to the Supreme Soviet of the Autonomous Republic are the exclusive prerogative of that Supreme Soviet. Laws of an Autonomous Republic shall be enacted by the Supreme Soviet of the Autonomous Republic.

Article 144. The Supreme Soviet of an Autonomous Republic shall elect a Presidium of the Supreme Soviet of the Autonomous Republic and shall form a Council of Ministers of the Autonomous Republic, i.e., the Government of that Republic.

Chapter 19: Local Bodies of State Authority and Administration

Article 145. The bodies of state authority in Territories, Regions, Autonomous Areas, districts, cities, city districts, settlements, and rural communities shall be the corresponding Soviets of People's Deputies.

Article 146. Local Soviets of People's Deputies shall deal with all matters of local significance in accordance with the interest of the whole state and of the citizens residing in the area under their jurisdiction, implement decisions of higher bodies of state authority, guide the work of lower Soviets of People's Deputies, take part in the discussion of matters of Republican and All-Union significance, and submit their proposals concerning them. Local Soviets of People's Deputies shall direct state, economic, social and cultural development within their territory; endorse plans for economic and social development and the local budget; exercise general guidance over state bodies, enterprises, institutions and organizations subordinate to them; ensure

observance of the laws, maintenance of law and order; and protection of citizens' rights; and help strengthen the country's defense capacity.

Article 147. Within their powers, local Soviets of People's Deputies shall ensure the comprehensive, all-round economic and social development of their area; exercise control over the observance of legislation by enterprises, institutions and organizations subordinate to higher authorities and located in their area; and coordinate and supervise their activity as regards land use, nature conservation, building, employment of manpower, production of consumer goods, and social, cultural, communal and other services and amenities for the public.

Article 148. Local Soviets of People's Deputies shall decide matters within the powers accorded them by the legislation of the USSR and of the appropriate Union Republic and Autonomous Republic. Their decisions shall be binding on all enterprises, institutions, and organizations located in their area and on officials and citizens.

Article 149. The executive-administrative bodies of local Soviets shall be the Executive Committees elected by them from among their deputies. Executive Committees shall report on their work at least once a year to the Soviets that elected them and to meetings of citizens at their places of work or residence.

Article 150. Executive Committees of local Soviets of People's Deputies shall be directly accountable both to the Soviet that elected them and to the higher executive and administrative body.

VII. Justice, Arbitration, and Procurator's Supervision

Chapter 20: Courts and Arbitration

Article 151. In the USSR justice is administered only by the courts. In the USSR there are the following courts: the Supreme Court of the USSR, the Supreme Courts of Union Republics; the Supreme Courts of Autonomous Republics, Territorial, Regional, and city courts; courts of Autonomous Regions; courts of Autonomous Areas, district (city) people's courts; and military tribunals in the Armed Forces.

Article 152. All courts in the USSR shall be formed on the principle of the electiveness of judges and people's assessors. People's judges of district (city) people's courts shall be elected for a term of five years by the citizens of the district (city) on the basis of universal, equal and direct suffrage by secret ballot. People's assessors of district (city) people's courts shall be elected for a term of two and a half years at meetings of citizens at their places of work or residence by a show of hands. Higher courts shall be elected for a term of five years by the corresponding Soviet of People's Deputies. The judges of military tribunals shall be elected for a term of five years by the Presidium of the Supreme Soviet of the USSR and by people's assessors for a term of two and a half years by meetings of servicemen. Judges and people's assessors are responsible and accountable to their electors or the bodies that elected them, shall report to them, and may be recalled by them in the manner prescribed by law.

Article 153. The Supreme Court of the USSR is the highest judicial body in the USSR

and supervises the administration of justice by the courts of the USSR and Union Republics within the limits established by law. The Supreme Court of the USSR shall be elected by the Supreme Soviet of the USSR and shall consist of a Chairman, Vice Chairmen, members, and people's assessors. The Chairmen of the Supreme Courts of Union Republics are *ex officio* members of the Supreme Court of the USSR. The organization and procedure of the Supreme Court of the USSR are defined in the Law on the Supreme Court of the USSR.

Article 154. The hearing of civil and criminal cases in all courts is collegial; in courts of first instance cases are heard with the participation of people's assessors. In the administration of justice, people's assessors have all the rights of a judge.

Article 155. Judges and people's assessors are independent and subject only to the law.

Article 156. Justice is administered in the USSR on the principle of the equality of citizens before the law and the court.

Article 157. Proceedings in all courts shall be open to the public. Hearings *in camera* are only allowed in cases provided for by law, with observance of all the rule of judicial procedure.

Article 158. A defendant in a criminal action is guaranteed the right to legal assistance.

Article 159. Judicial proceedings shall be conducted in the language of the Union Republic, Autonomous Republic, Autonomous Region, or Autonomous Area, or in the language spoken by the majority of the people in the locality. Persons participating in court proceedings, who do not know the language in which proceedings are being conducted, shall be ensured the right to become fully acquainted with the materials in the case; the services of an interpreter during the proceedings; and the right to address the court in their own language.

Article 160. No one may be adjudged guilty of a crime and subjected to punishment as a criminal except by the sentence of a court and in conformity with the law.

Article 161. Colleges of advocates are available to give legal assistance to citizens and organizations. In cases provided for by legislation, citizens shall be given legal assistance free of charge. The organization and procedure of the bar are determined by legislation of the USSR and Union Republics.

Article 162. Representatives of public organizations and of work collectives may take part in civil and criminal proceedings.

Article 163. Economic disputes between enterprises, institutions, and organizations are settled by state arbitration bodies within the limits of their jurisdiction. The organizations and manner of functioning of state arbitration bodies are defined in the Law on State Arbitration in the USSR.

Chapter 21: The Procurator's Office

Article 164. Supreme power of supervision over the strict and uniform observance of laws by all ministries, state committees and departments, enterprises, institutions and organizations, executive-administrative bodies of local Soviets of People's Deputies, collective farms, cooperatives and other public organizations, officials and citizens is vested in the Procurator-General of the USSR and procurators subordinate to him.

Article 165. The Procurator-General of the USSR is appointed by the Supreme Soviet of the USSR and is responsible and accountable to it and, between sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet of the USSR.
Article 166. The procurators of Union Republics, Autonomous Republics, Territories, Regions and Autonomous Regions are appointed by the Procurator-General of the USSR. The procurators of Autonomous Areas and district and city procurators are appointed by the Procurators of Union Republics, subject to confirmation by the Procurator-General of the USSR.
Article 167. The term of office of the Procurator-General of the USSR and all lower-ranking procurators shall be five years.
Article 168. The agencies of the Procurator's Office exercise their powers independently of any local bodies whatsoever, and are subordinate solely to the Procurator-General of the USSR. The organization and procedure of the agencies of the Procurator's Office are defined in the Law on the Procurator's Office of the USSR.

VIII. The Emblem, Flag, Anthem, and Capital of the USSR

Article 169. The State Emblem of the Union of Soviet Socialist Republics is a hammer and sickle on a globe depicted in the rays of the sun and framed by ears of wheat, with the inscription "Workers of All Countries, Unite!" in the languages of the Union Republics. At the top of the Emblem is a five-pointed star.
Article 170. The State Flag of the Union of Soviet Socialist Republics is a rectangle of red cloth with a hammer and sickle depicted in gold in the upper corner next to the staff and with a five-pointed red star edged in gold above them. The ratio of the width of the flag to its length is 1:2.
Article 171. The State Anthem of the Union of Soviet Socialist Republics is confirmed by the Presidium of the Supreme Soviet of the USSR.
Article 172. The Capital of the Union of Soviet Socialist Republics is the city of Moscow.

IX. The Legal Force of the Constitution of the USSR and the Procedure for Amending the Constitution

Article 173. The Constitution of the USSR shall have supreme legal force. All laws and other acts of state bodies shall be promulgated on the basis of and in conformity with it.
Article 174. The Constitution of the USSR may be amended by a decision of the Supreme Soviet of the USSR adopted by a majority of not less than two-thirds of the total number of Deputies of each of its chambers.

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